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SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 136

RICHARD H. M. SWANN, ET AL., APPELLANTS,

vs.

TOM ADAMS, SECRETARY OF STATE OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED MAY 14, 1966

PROBABLE JURISDICTION NOTED OCTOBER 10, 1966

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE UNITED STATES DISTRICT COURT

Three Judge Case

Non-Jury DD

186-62-M-Civil-DD

RICHARD H. M. SWANN,

vs.

TOM ADAMS, Secretary of State of the State of Florida; CLAUDE R. BROWN, Supervisor of Registration of Dade County, Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida.

Suit for fair reapportionment of representatives in Legislature.

For plaintiff:

Richard H. Swann, 634 W. Flagler St., Miami, Fla.

DOCKET ENTRIES

[fol. B]

DATE	PROCEEDINGS
1962	
Mar. 28	Complaint
Mar. 28	Summons Issued
April 12	Summons returned executed on Claude R. Brown, 4-2-62
April 12	Summons returned executed on Tom Adams—4-3-62
April 12	Summons returned executed on E. L. Gates—4-4-62

DATE	PROCEEDINGS
1962	
Apr. 17	Summons returned executed W. B. Freeman
Apr. 23	Answers of Defendant, Claude R. Brown to Amended Complaint
Apr. 24	Memorandum in Support of Motion to Dismiss Complaint by Defendant
Apr. 24	Notice of Hearing 5/7/62 10:
Apr. 27	Motion to Dismiss by Defendant
Apr. 30	Notice of Hearing 21 May 62
Apr. 30	Motion to Dismiss & Answer by Defendant
Apr. 30	Memorandum Brief
May 7	Notice of Hearing 5/21/62 10:00 D
May 7	Memorandum in Support of Motion to Dismiss Complaint
May 7	Motion to Dismiss
May 3	Notice of Hearing 5/21/62-2
May 3	Motion to Amend by Plaintiff
May 3	Memorandum in Opposition to Motions to Dismiss
May 15	Memo in opposition of motion to dismiss, etc.
May 15	Notice of hearing 5-21-62-D
May 16	Motion for impanelment of three judge court
May 16	Notice of hearing 5-21-62-D
May 18	Notice of Hearing 5/21/62
May 18	Motion to Dismiss by Defendant
May 18	Memorandum in Support of Motion to Dismiss
May 21	Order of Consolidation Consolidation With Case(s) 182-62
Jun. 12	Three Judge Hearing on all pending motions—Order to be entered by the Court
June 22	Pre-Trial Conference—Final Hearing set for 7/23/62.
Aug. 20	Minutes of Court
Dec. 21	House Resolution 47-XX

DATE	PROCEEDINGS
1963	
Feb. 7	Opinion of Three Judge Court regarding Judgment
Feb. 7	Judgment determining validity of Senate Bill 10-X
June 25	Opinion of U.S. Supreme Court with Attached Letter (copies to 3 Judges) Reversing Judgment of U.S.D.C.
July 20	Mandate From U.S.S.C. Reversing and Remanding For Further Proceedings.
Sep. 9	Pet of League of Women Voters of Fla. to File Brief Amicus Curiae.
Oct. 21	Petition of Edward Vioira to Intervene.
Oct. 21	Order Correction Error For Filing Petition.
Oct. 21	Order Denying Petition of Swann to Restrain Sec. of State. Re: Vote on General Ballot of Nov. 3, 1964
Oct. 21	Certify That Original of Memo. of Law Was Filed With Court on 10/14/64.
Nov. 12	Pltfs Motion For Hearing Date.
Nov. 12	Pltfs Pet For Order on Mandate.
Nov. 17	Notice of Document Returned.
[fol. C]	
1964	
Nov. 20	Motion to Accelerate Cause and For Other Relief Herman Goldner Petitioner.
Dec. 22	Exhibits Returned by U.S. Supreme Court. (Letter Accompanying).
Dec. 28	Memorandum Brief of Amicus Curiae.
Dec. 31	Record on Appeal Returned by U.S. Supreme Court, (Refiled).

DATE	PROCEEDINGS
1965	
Jan. 8	Order Denying Pet. to Intervene of Herman Goldner and Pet. For Order on Mandate of Lee Weissenborn, Granting Pet of League of Women Voters of Fla. and Pet. of Peter Sobel, Court Also Finds That He Has No Further Standing in Said Cases, Action Deferred Until Further Order of Court On All Pending and Undisposed Prayers of Swann, Etc.
Jan. 18	Motion For New Trial By Peter Sobel.
Jan. 27	Order; Peter B. Sobels' Motion For New Trial Stricken From the Files; Has No Standing in the Consolidated Cases (Judges Jones Mc Rae, Jr. and David W. Dyer; 1/22/65.
Mar. 3	Letter From Supreme Court Re: Weissenborn's Motion to Accelerate Filing of Briefs & to Advance Denied.
Mar. 18	Petition of Edward Vieira to Be Substituted as Pltf in Lieu of Richard H. M. Swann.
Mar. 31	Notice of Document Returned: Pet to Stay (Edward Vieira).
Apr. 28	Letter From Supreme Court Re: Weissenborn's Motion For Leave to File Pet For Mandamus Denied.
May 3	Cert Copy of Supreme Court Order: Denying Motion For Leave to File Pet For Writ of Mandamus As to Weissenborn (4/26/65).
May 26	Appearance of Counsel For Pltf Richard H. M. Swann. (Paul & Sams)
Jun. 16	Pet of Edward Vieira For Appointment of Monitor.
Jun. 22	Order of 3-Judge Court: Parties & Amici Curiae to Submit Plans By July 6, 1965, if Florida Legislature Has Not Validly Reapportioned By July 1, 1965. (Judge Jones)

DATE	PROCEEDINGS
1965	
Jun. 22	Notice of Document Ret. (Information For Court's Judicial Notice)
Jun. 24	Notice of Document Ret (Pet and Proposed Order)
Jun. 25	An Information For the Courts Judicial Notice (Edward Vieira, Petitioner)
June 29	Petition From Edward Vieira, Petitioner For Leave to Submit the Following Proposed Order
July 1	Petition of Manning J. Dauer to File Amicus Curiae Brief.
July 1	Order Granting Manning J. Dauer Permission to File Brief.
July 2	Amicus Curiae Brief of Manning J. Dauer.
July 2	Suggestion of Amicus Curiae by Halley B. Lewis.
July 6	Notice of Document Returned (Plan of Reapportionment).
July 6	Petition of John J. Savage to Become a Party As One of Amici Curiae.
July 6	Copy of Florida House Bill 19-XX and Senate Bill 26-XX (65).
July 6	Petition For Leave to Submit Plan of Reapportionment As Amicus Curiae, by Wometco Enterp.
July 6	Joint Petition to Declare Legislative Apportionment Act Unconstitutional and Submitting Valid Reapportionment Plan For Adoption By Court.
July 6	Response of League of Women Voters As Amicus Curiae, to Order of June 22, 1965.
July 6	Petition of Government Research Council As Amicus Curiae.
July 6	Notice of Document Returned (Motion For Entry of Order Ext. Time For Filing Return to Court's Mandate). (To Robert A. Chastain).

[fol. D]

DATE		PROCEEDINGS
1965		
July	6	Notice of Document Returned to Fred L. Spencer (Suggested Plan of Reapportionment.
July	6	Notice of Document Returned to John E. Mathews, Jr. (Memo Brief of Amicus Curiae, et al)
July	6	Notice of Document Returned to Hon. L. S. Campbell (Reapportionment Plan).
July	6	Notice of Document Returned to David B. Higginbottom (Petition to Intervene As Amicus Curiae).
July	6	Notice of Document Returned to Wm. Reece Smith, Jr. (Petition of Herman W. Goldner to File Plan of Reapportionment).
July	6	Notice of Document Returned to John B. McLeod (Plan For Reapportionment).
July	6	Motion For Entry of Order Extending Time For Filing Return to Court's Mandate, Filed by Defendants. (Copy of House Bill 19-XX attached)
July	6	Order upon Motion of the State of Florida For Tom Adams, For Extension of Time For a Response to the Order of the Court Requesting Parties in Amici to File Plans and Supporting Data, Order Granting Fifteen Days to Respond. (7/6/65)
July	9	Memorandum Brief of Amicus Curiae Filed By John E. Mathews, Jr. With Attached House Bill 19-XX (Which Became Law Midnight July 6, 1965).
July	6	Petition of James L. Beardsley to Be Recognized As Amici Curiae.
July	6	Petition of Herman W. Goldner to File Plan of Reapportionment As A. Curiae.
July	6	Plan of Reapportionment of the Legislature of the State of Florida.

DATE		PROCEEDINGS
1965		
July	6	Petition of David B. Higginbottom to Intervene As Amicus Curiae.
July	9	Statement of Errata Correcting Mathematical and Typographical Errors in "Joint Petition to Declare Legislative Apportionment, Etc." Filed on 7/6/65, Filed By Richard H. M. Swann.
July	14	Brief of John E. Mathews, Jr.,—Amicus Curiae —in Support of the Constitutional Validity of House Bill 19-XX.
July	19	Brief of Amicus Curiae in Opposition to House Bill 19-XX, Filed By Mallory E. Horne.
July	19	Statement of Errata Amicus Curiae Brief of Manning J. Dauer.
July	19	Petition to Be Authorized As Amici Curiae to Submit Re-apportionment Plan (With Copy of Plan for Reapportionment), By John B. McLeod.
July	22	Notice of Document Returned (Pet. For Leave to File Brief: Brief of Amicus Curiae) to A. J. Thomas, Jr. and William Wadsworth.
July	23	Petition of the Young Democratic Club of Dade County, Florida to Appear As Amicus Curiae With Amicus Curiae Brief Attached.
July	26	Supplement of 23 July, 1965 Amicus Curiae Brief of Manning J. Dauer.
Aug.	2	Petition of Edward Vieira For Court's Consent to Appeal As Substitute Plaintiff.
Aug.	2	Plea of Edward Vieira For Court to Relax Certain Rules in the Public Interest.
Aug.	2	Petition of Sam Jones (to Relax Certain Rules in the Public Interest).
Aug.	2	An Information For Court's Judicial Notice By Sam Jones.
Aug.	2	Letter and Plan of Rene A. Zacchini.

DATE		PROCEEDINGS
1965		
Aug.	2	Letter From Ormand Powers & Newspaper Editorial.
Aug.	2	Letter—Plan of Matthew M. Slepin.
Aug.	2	Letter—Plan of Michael Abrams.
Aug.	2	Letter—Plan of R. F. Lencioni.
Aug.	2	Letter—Plan of W. C. NeSmith.
Aug.	2	Suggestion and Plan of Justin F. Langille.
Aug.	2	Letter—Plan of Russell C. Jordan, Jr.
[fol. E]		
Aug.	2	Letter—Plan of Paul Douglass.
Aug.	2	Letter—Plan of Jerry Carter.
Aug.	2	Petition of A. J. Thomas and William L. Wadsworth For Leave to File Brief and Appear Amicus Curiae.
Aug.	2	Order Accepting For Filing As Briefs Amici Curiae the Petitions and Letters Tendered By John Mc Leod, David Higginbottom, John Savage, Herman Goldner, James Beardsley, Wometco Enterprises, Edward Bieira, Sam Jones, Rene Zacchini, Ormund Powers, Matthew Slepin, Michael Abrams, R. F. Lencioni, W. C. NeSmith, Justin Lagill, Russell Jordan Jr., Paul Douglass, Jerry Carter, Young Democratic Club of Dade County, A. J. Thomas and Wm. L. Wadsworth (7/31/65).
Aug.	4	An Information For Courts Judicial Notice By Edward Vieira.
Aug.	4	Brief of Amicus Curiae in Opposition to the Constitutional Validity of House Bill 19-XX Passed By the Legislature in June, 1965 and Proffer of Plan Which Would Meet the Equal Protection Test, Filed By A. J. Thomas, Jr. and William L. Wadsworth.

DATE		PROCEEDINGS
1965		
Aug.	4	An Information For the Court's Judicial Notice By Edward Vieira.
Oct.	4	An Information For the Courts Judicial Notice By Edward Vieira.
Oct.	5	Notice of Hearing on All Pending Matters 11/2/65/11:00.
Oct.	7	An Information For the Court's Judicial Notice By Edward Vieira.
Oct.	26	Amicus Curiae Brief of Manning J. Dauer (Supplement of 10/16/65)
Oct.	29	Memorandum of Amicus Curiae Halley B. Lewis.
Nov.	2	An Information For the Court's Judicial Notice in the Instant Cause By Edward Vieira.
Nov.	30	Memorandum to the Court.
Dec.	23	Order: Plan of Apportionment As Enacted Does Not Meet Requirements of Equal Protection Clause of Federal Constitution; Plan As Enacted Is Modified By Deleting Section 1(3) and Approved As an Interim Plan For a Period Ending 60 Days After Adjournment of 1967 Regular Session of Florida Legislature; District Court Retains Jurisdiction Until Adjudication That Valid Plan Has Been Enacted or Made Effective By Decree of Court. (WLJ) DWD) WAM).
Dec.	29	Petition to Intervene For the Purpose of Appeal By Edward Vieira.
Dec.	29	Notice of Appeal By Richard H. M. Swann. (to Supreme Court).
Dec.	30	Notice of Appeal By Claude R. Brown. (to Supreme Court).

DATE	PROCEEDINGS
1966	
Jan. 5	Order Denying Petition of Edward Vieira to Intervene.
Jan. 5	Stipulation As to Appeal By Tom Adams.
Jan. 7	Stipulation As to Appeal By W. B. Freeman.
Jan. 7	Stipulation As to Appeal By E. L. Gates.
Jan. 18	Motion of Pltf. For Permission to Remove Portion of Record For Photocopying.
Jan. 18	Order Granting Motion For Permission to Remove Portion For Photocopying For Appeal Purposes. (1/18/66)
Jan. 18	An Information For the Court's Judicial Notice, Etc. Filed By Edward Vieira.
Jan. 27	Record on Appeal Forwarded to Parker Thompson, Esq. For Transmittal to the United States Supreme Court.
Feb. 28	Opinion From Supreme Court With Letter Attached Stating that Judgment or Mandate Will Issue after 25 Days. Opinion: District Court Reversed and Remanded.
Feb. 28	Joint Petition of Pltf. and Deft. Dade County Supervisor of Registration to Carry Out Order of U.S. Supreme Court.
Mar. 1	Order on Joint Petition of Parties: This Court Without Jurisdiction Until Mandate Received: Hearing on Petition Deferred Until a Time to Be Set After Receipt of U.S. Supreme Court Mandate or Judgment. (3/1/66)
[fol. F]	
Mar. 7	Judgment From the Supreme Court: District Court Reversed With Costs; Cause Is Remanded to the District Court For Further Proceedings in Conformity With the Opinion of the Supreme Court. Further Ordered That the Appellants Recover From Appellees $100.00 For Their Costs Herein Expended.

DATE	PROCEEDINGS
1966	
Mar. 8	Notice of Hearing For Tuesday, March 15, 1966 at 11:00 A.M.
Mar. 14	Brief of Amicus Curiae John E. Mathews, Jr. in Support of Constitutional Validity of House Bill 17-X.
Mar. 14	Motion of Deft. Tom Adams to Adopt Reapportionment Plan.
Mar. 15	Suggested Modification to the Plan of Apportionment Contained in HB 17-X Enacted By the Legislature on 3/9/66, Filed By Plaintiff and Deft. Supervisor of Elections of Dade County, Florida.
Mar. 15	Analysis of HB 17-X As Enacted By the Legislature, Etc. Filed by Pltf. and Deft., Supervisor of Elections.
Mar. 18	Order on Reapportion: The Plan of Apportionment of the Florida Legislature, As Found in HB 17-X(66), Enacted in March 1966, Meets Federal Constitutional Standards and Is Accepted By This Court As the Standard to Be Used in Selecting Members For the 1967 Session of the Florida Legislature. (3/18/66)
Mar. 25	Notice of Appeal to the Supreme Court By the Supervisor of Elections of Dade County, Florida, Previously Known As the Supervisor of Registration of Dade County, Florida.
Mar. 25	Notice of Appeal to the Supreme Court By the Plaintiff Richard H. M. Swann.
Apr. 14	Transcript of Hearing Held on March 15, 1966.
19	Notice of Appearance of Additional Counsel. (Parker, Foster & Madigan For Defendant W. B. Freeman, Supervisor of Registration of Monroe County, Fla.)

DATE		PROCEEDINGS
1966		
May	5	Motion to Remove File to Prepare Record on Appeal.
	5	Order Granting Motion to Remove File to Prepare Record on Appeal (5/5).

I certify the foregoing to be a true and correct copy of the original which has been filed of record in this Office.

Joseph I. Bogart, Clerk, United States District Court, Southern District of Florida, By Melvin R. Stein, Deputy Clerk.

[Seal]

[fol. 1]

SUPREME COURT OF THE UNITED STATES

SWANN et al.,

v.

ADAMS et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973.

PER CURIAM—DECIDED FEBRUARY 25, 1966—Filed in District Court February 28, 1966

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to "meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims*. . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan [fol. 2] fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART would affirm the judgment.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

[fol. 3]

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

February 25, 1966

Re: SWANN, ET AL. v. ADAMS, ET AL.,
No. 973, Oct. Term, 1965
(Your No. 186-62-M-Civ.)

Dear Sir:

The enclosed opinion of this Court in the above case was announced on the date indicated.

The judgment or mandate will issue after the expiration of 25 days from the date of the opinion, or if a timely petition for rehearing is filed, from the date of the order thereon. When the 25-day period expires in vacation, the filing of a petition for rehearing will not stay the issuance of the judgment or mandate. (See Rule 59).

Very truly yours,

John F. Davis, Clerk, By /s/ Michael Rodak, Jr.,
Chief Deputy.

Encl.

Clerk, U.S. District Court for the Southern District of Florida, Miami, Fla.

AIRMAIL

[fol. 4]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

RICHARD H. M. SWANN, Plaintiff,

—v—

TOM ADAMS, Secretary of State of the State of Florida, et al., Defendants.

JOINT PETITION TO CARRY OUT ORDER OF U. S. SUPREME COURT—Filed February 28, 1966

Plaintiff and Defendant Dade County Supervisor of Registration jointly move the Court to place into effect in Florida forthwith the legislative reapportionment plan attached hereto as Exhibit A and previously filed with this Court on July 6, 1965 on the following grounds:

1. The Supreme Court of the United States in its order of February 25, 1966 reversing in part this Court's order of December 23, 1965 directed that a valid reapportionment plan be made effective for the 1966 elections.

2. The first primary elections in Florida for State offices, including members of the Legislature, will be held May 3, 1966. The Supreme Court has held that this election may not take place prior to placing into effect a reapportionment plan meeting constitutional requirements.

[File endorsement omitted]

[fol. 5] 3. The Legislature of the State of Florida, as presently constituted, has been held by the United States Supreme Court to be unconstitutionally apportioned. To permit this malapportioned Legislature which does not represent the people of the State of Florida to enact another reapportionment plan would deny to Plaintiff and to others similarly situated due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The 1965 Special Session of the Florida Legislature which adopted the reapportionment plan declared unconstitutional by this Court on December 23, 1965 cost the State of Florida $323,796. and the Comptroller of the State of Florida has estimated that another special session would cost $12,000. a day. After seven Legislative attempts to reapportion, the Court should not permit an eighth expensive exercise in futility.

5. The 32 Senator and 68 Representative plan attached hereto as Exhibit A meets all constitutional requirements. In no constituency under this plan is there any deviation of more than 3.35 percent from the ideally sized constituency based on absolute mathematical equality. The Plan is also in accordance with the requirements of Article VII, Section 2 of the Florida Constitution.

If the Court should not adopt this Plan at this time, Petitioners then respectfully request the Court to decree that each member of the Florida Legislature at the Special [fol. 6] Session called to convene on Wednesday, March 2, 1966 cast a vote (including votes cast in committees and party caucuses) weighted in proportion to the number (as shown by the 1960 decennial census) of people in the area from which he was elected to protect Plaintiff and others similarly situated from discrimination by an unconstitu-

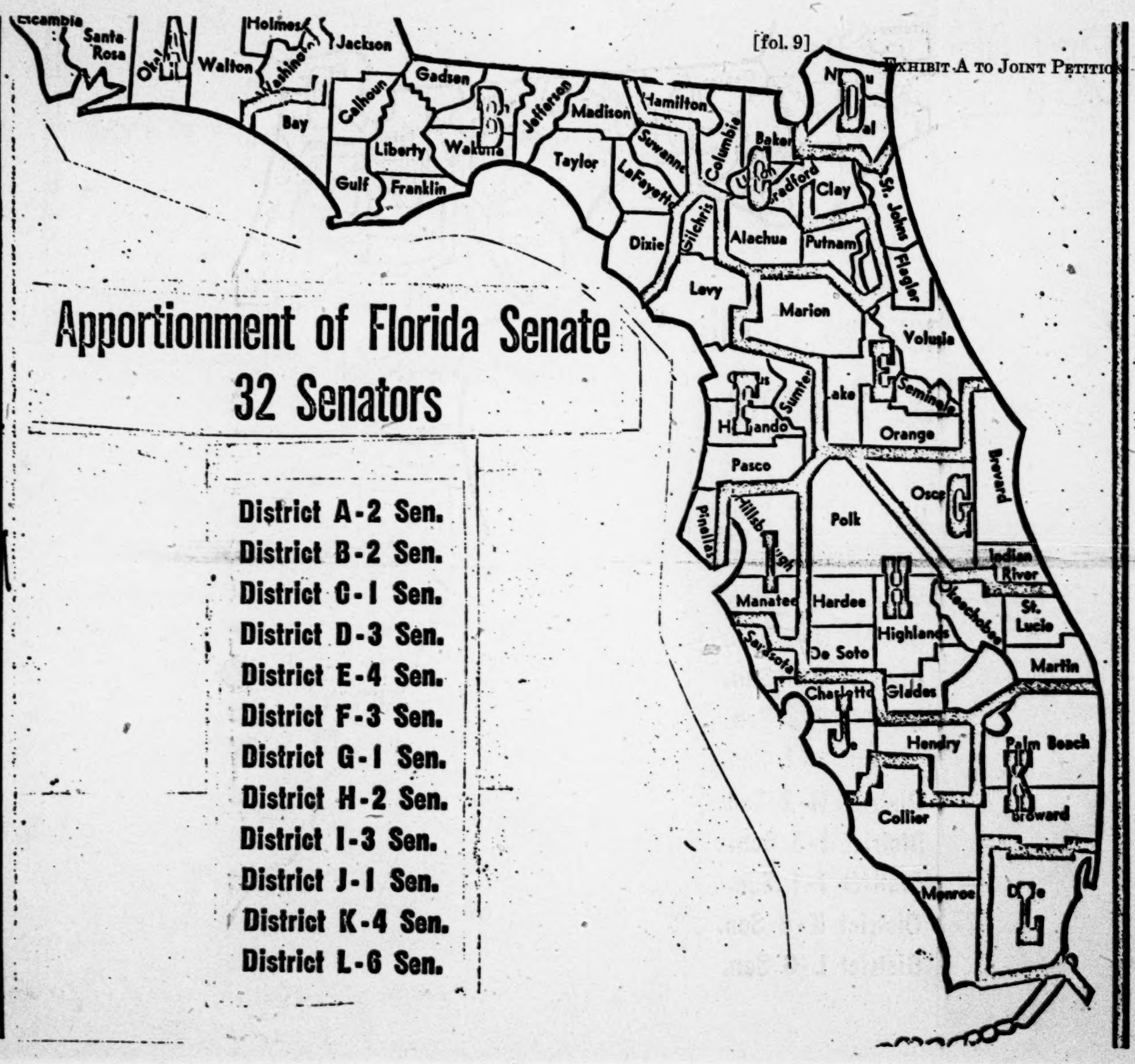
tional malapportioned Legislature. A schedule showing such weighted votes is attached hereto as Exhibit B.

D. P. S. Paul, P. D. Thomson, Paul & Sams, Attorneys for Plaintiff, 1314 First National Bank Building, Miami, Florida 33131.

Thomas C. Britton, Dade County Attorney, Stuart L. Simon, Assistant Dade County Attorney, Attorneys for Defendant, Supervisor of Elections.

[fol. 7] Certificate of Service (omitted in printing).

EXHIBIT A TO JOINT PETITION



[fol. 10]

APPORTIONMENT OF FLORIDA SENATE

32 SEATS

District	*County*	*1960 Population*
A	Escambia	173,829
(2 Senators)	Santa Rosa	29,547
	Okaloosa	61,175
	Walton	15,576
	Holmes	10,844
	Washington	11,249
	Total	302,220

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 151,110 persons.

B	Jackson	36,208
(2 Senators)	Bay	67,131
	Calhoun	7,422
	Gulf	9,937
	Franklin	6,576
	Liberty	3,138
	Gadsden	41,989
	Leon	74,225
	Wakulla	5,257
	Jefferson	9,543
	Madison	14,154
	Taylor	13,168
	Suwannee	14,961
	Lafayette	2,889
	Dixie	4,479
	Total	311,077

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 155,539 persons.

District	*County*	*1960 Population*
C	Hamilton	7,705
(1 Senator)	Columbia	20,077
	Baker	7,363
	Union	6,043
	Bradford	12,446
	Alachua	74,074
	Putnam	32,212
	Total	159,920

[fol. 11]

D	Nassau	17,189
(3 Senators)	Duval	455,411
	Total	472,600

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 157,533 persons.

E	Clay	19,535
(4 Senators)	St. Johns	30,034
	Flagler	4,566
	Volusia	125,319
	Marion	51,616
	Lake	57,383
	Seminole	54,947
	Orange	263,540
	Total	606,940

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 151,735 persons.

District	*County*	*1960 Population*
F	Gilchrist	2,868
(3 Senators)	Levy	10,364
	Citrus	9,268
	Sumter	11,869
	Hernando	11,205
	Pasco	36,785
	Pinellas	374,665
	Total	457,024

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 152,341 persons.

G	Osceola	19,029
(1 Senator)	Brevard	111,435
	Indian River	25,309
	Total	155,773

H	Polk	195,139
(2 Senators)	Hardee	12,370
	De Soto	11,683
	Highlands	21,338
	Okeechobee	6,424
	Glades	2,950
	St. Lucie	39,294
	Martin	16,932
	Total	306,130

[fol. 12] When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 153,065 persons.

District	*County*	*1960 Population*
I	Hillsborough	397,788
(3 Senators)	Manatee	69,168
	Total	466,956

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 155,652 persons.

J	Sarasota	76,895
(1 Senator)	Charlotte	12,594
	Lee	54,539
	Hendry	8,119
	Total	152,147
K	Palm Beach	228,106
(4 Senators)	Broward	333,946
	Collier	15,753
	Monroe	47,921
	Total	625,726

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 156,432 persons.

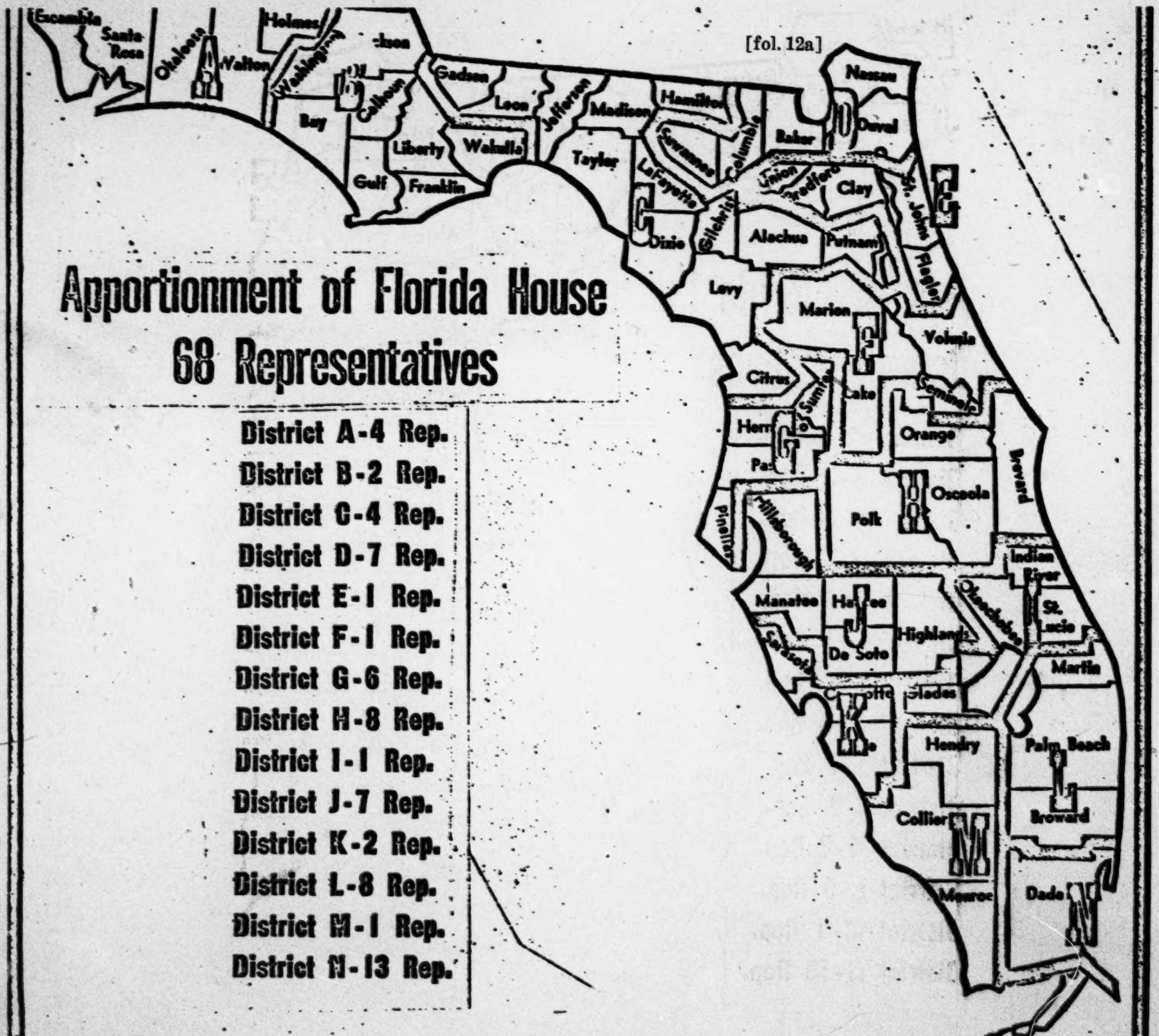
L		
(6 Senators)	Dade	935,047

When the population in this district is divided by the number of Senators allotted to it, it will be seen that each Senator will represent 155,841 persons.

[fol. 12a]

(See opposite) ☞

[fol. 12a]



Apportionment of Florida House

68 Representatives

District A	4 Rep.
District B	2 Rep.
District C	4 Rep.
District D	7 Rep.
District E	1 Rep.
District F	1 Rep.
District G	6 Rep.
District H	8 Rep.
District I	1 Rep.
District J	7 Rep.
District K	2 Rep.
District L	8 Rep.
District M	1 Rep.
District N	13 Rep.

[fol. 13]

APPORTIONMENT OF FLORIDA HOUSE

68 SEATS

District	*County*	*1960 Population*
A	Escambia	173,829
(4 Representatives)	Santa Rosa	29,547
	Okaloosa	61,175
	Walton	15,576
	Holmes	10,844
	Total	290,971

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 72,743 persons.

B	Jackson	36,208
(2 Representatives)	Washington	11,249
	Bay	67,131
	Calhoun	7,422
	Gulf	9,937
	Liberty	3,138
	Franklin	6,576
	Wakulla	5,257
	Total	146,918

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 73,459 persons.

C	Hamilton	7,705
(4 Representatives)	Gadsden	41,989
	Leon	74,225
	Jefferson	9,543

District	*County*	*1960 Population*
	Madison	14,154
	Taylor	13,168
	Lafayette	2,889
	Dixie	4,479
	Gilchrist	2,868
	Alachua	74,074
	Levy	10,364
	Putnam	32,212
	Citrus	9,268
	Total	296,938

[fol. 14] When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 74,235 persons.

D	Nassau	17,189
(7 Representatives)	Duval	455,411
	Baker	7,363
	Columbia	20,077
	Suwannee	14,961
	Total	515,001

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 73,572 persons.

E	Union	6,043
(1 Representative)	Bradford	12,446
	Clay	19,535
	St. Johns	30,034
	Flagler	4,566
	Total	72,624

District	*County*		*1960 Population*
F	Marion		51,616
(4 Representatives)	Lake		57,383
	Volusia		125,319
	Seminole		54,947
		Total	289,265

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 72,316 persons.

G	Sumter		11,869
(6 Representatives)	Hernando		11,205
	Pasco		36,785
	Pinellas		374,665
		Total	434,524

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 72,421 persons.

[fol. 15]

H	Orange		263,540
(8 Representatives)	Polk		195,139
	Osceola		19,029
	Brevard		111,435
		Total	589,143

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 73,643 persons.

District	*County*		*1960 Population*
I	Indian River		25,309
(1 Representative)	Okeechobee		6,424
	St. Lucie		39,294
	Glades		2,950
		Total	73,977
J	Hillsborough		397,788
(7 Representatives)	Manatee		69,168
	Hardee		12,370
	De Soto		11,683
	Highlands		21,338
		Total	512,347

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 73,192 persons.

K	Sarasota		76,895
(2 Representatives)	Charlotte		12,594
	Lee		54,539
		Total	144,028

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 72,014 persons.

L	Martin		16,932
(8 Representatives)	Palm Beach		228,106
	Broward		333,946
		Total	578,984

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 72,373 persons.

District	*County*		*1960 Population*
[fol. 16]			
M	Hendry		8,119
(1 Representative)	Collier		15,753
	Monroe		47,921
		Total	71,793
N	Dade		935,047
(13 Representatives)			

When the population of this district is divided by the number of Representatives allotted to it, it will be seen that each Representative will represent 71,927 persons.

[fol. 17]

DEVIATION FROM "IDEAL" OR ABSOLUTE MATHEMATICAL EQUALITY

Senate "Ideal" or Absolute Mathematical Equality of 154,736:

District	*Senators*	*Persons Represented Per Senator*	*Percentage of Deviation*
A	2	151,110	—2.34
B	2	155,539	+0.52
C	1	159,920	+3.35
D	3	157,533	+1.81
E	4	151,735	—1.94
F	3	152,341	—1.55
G	1	155,773	+0.67
H	2	153,065	—1.08
I	3	155,652	+0.59
J	1	152,147	—1.67
K	4	156,432	+1.10
L	6	155,841	+0.71

House "Ideal" or Absolute Mathematical Equality of 72,817:

District	*Representatives*	*Persons Represented Per Rep.*	*Percentage of Deviation*
A	4	72,743	—0.10
B	2	73,459	+0.88
C	4	74,235	+1.95
D	7	73,572	+1.04
E	1	72,624	—0.27
F	4	72,316	—0.69
G	6	72,421	—0.54
H	8	73,643	+1.13
I	1	73,977	+1.59
J	7	73,192	+0.51
K	2	72,014	—1.10
L	8	72,373	—0.61
M	1	71,793	—1.41
N	13	71,927	—1.22

[fol. 18]

Exhibit B to Joint Petition

(See opposite) ☞

[fol. 18]

WEIGHTED VOTING PLAN BASED ON PRESENT APPORTIONMENT OF THE FLORIDA LEGISLATURE

	1960 Population		Representatives			Senators	
County	Number	Percent of State	Present Number	Total Weighted Votes for County	Weighted vote for each Repre-sentative	Present Number	Weighted Vote
Dade	935,047	18.8839	14	21.14997	1.511	2	8.120 [1/]
Duval	455,411	9.1973	7	10.30098	1.472	1	3.955
Hillsborough	397,788	8.0336	6	8.99763	1.500	1	3.454
Pinellas	374,665	7.5666	6	8.47459	1.412	1	3.254
Broward	333,946	6.7443	5	7.55362	1.511	1	2.900
Orange	263,540	5.3224	4	5.96109	1.490	1	2.289
Palm Beach	228,106	4.6067	4	5.15950	1.290	1	1.981
Polk	195,139	3.9410	3	4.41392	1.471	1	1.695
Escambia	173,829	3.5106	3	3.93187	1.311	1	1.510
Volusia	125,319	2.5309	2	2.83461	1.417	1	1.088
Brevard	111,435	2.2505	2	2.52056	1.260	1	.968
Sarasota	76,895	1.5529	1	1.73925	1.739	1	.668
Leon	74,225	1.4990	1	1.67888	1.679	1	.645
Alachua	74,074	1.4960	1	1.67552	1.676	1	.643
Manatee	69,168	1.3969	1	1.56453	1.564	1	.601
Bay	67,131	1.3558	1	1.51850	1.518	1	.583
Okaloosa	61,175	1.2355	1	1.38376	1.384	1	.531
Lake	57,383	1.1589	1	1.29797	1.298	1	.498
Seminole	54,947	1.1097	1	1.24286	1.243	1	.477
Lee	54,539	1.1015	1	1.23368	1.234	1/3	.474
Marion	51,616	1.0424	1	1.16749	1.167	1	.448
Monroe	47,921	.9678	1	1.08394	1.084	1	.416
Gadsden	41,989	.8480	1	.94976	.950	1	.365
St. Lucie	39,294	.7936	1	.88883	.889	1	.341
Pasco	36,785	.7429	1	.83205	.832	1	.319
Jackson	36,208	.7312	1	.81894	.819	1/2	.314
Putnam	32,212	.6504	1	.72845	.728	1	.280
St. Johns	30,034	.6066	1	.67939	.679	1/2	.261
Santa Rosa	29,547	.5967	1	.66830	.668	1	.257

1/ Each of the 2 senators in Dade County would have 4.060 votes.

[fol. 19]

County	1960 Population Number	1960 Population Percent of State	Representatives Present Number	Representatives Total Weighted Votes for County	Representatives Weighted vote for each Representative	Senators Present Number	Senators Weighted Vote
Indian River	25,309	.5111	1	.57243	.572	1	.220
Highlands	21,338	.4309	1	.48261	.483	1/2	.185
Columbia	20,077	.4055	1	.45416	.454	1	.174
Clay	19,535	.3945	1	.44184	.442	1/3	.170
Osceola	19,029	.3843	1	.43042	.430	1/3	.165
Nassau	17,189	.3471	1	.38875	.389	1/2	.149
Martin	16,932	.3420	1	.38304	.383	1/3	.147
Collier	15,753	.3181	1	.35627	.356	1/3	.137
Walton	15,576	.3146	1	.35235	.352	1/3	.135
Suwannee	14,961	.3021	1	.33835	.338	1/3	.130
Madison	14,154	.2858	1	.32010	.320	1/3	.123
Taylor	13,168	.2659	1	.29781	.298	1/3	.114
Charlotte	12,594	.2543	1	.28482	.285	1/2	.109
Bradford	12,446	.2514	1	.28157	.282	1/3	.108
Hardee	12,370	.2498	1	.27978	.280	1/3	.107
Sumter	11,869	.2397	1	.26846	.268	1/3	.103
DeSoto	11,683	.2359	1	.26421	.264	1/3	.101
Washington	11,249	.2272	1	.25446	.254	1/3	.098
Hernando	11,205	.2263	1	.25346	.253	1/3	.097
Holmes	10,844	.2190	1	.24528	.245	1/3	.094
Levy	10,364	.2093	1	.23441	.234	1/3	.089
Gulf	9,937	.2007	1	.22478	.225	1/4	.086
Jefferson	9,543	.1927	1	.21582	.216	1/3	.083
Citrus	9,268	.1872	1	.20966	.210	1/3	.080
Hendry	8,119	.1640	1	.18368	.184	1/3	.071
Hamilton	7,705	.1556	1	.17427	.174	1/3	.067
Calhoun	7,422	.1499	1	.16789	.168	1/2	.064
Baker	7,363	.1487	1	.16654	.167	1/2	.064
Franklin	6,576	.1328	1	.14874	.149	1/4	.057
Okeechobee	6,424	.1297	1	.14526	.145	1/3	.056
Union	6,043	.1220	1	.13664	.137	1/3	.052
Wakulla	5,257	.1062	1	.11894	.119	1/4	.046

[fol. 20]

	1960 Population		Representatives			Senators	
County	Number	Percent of State	Present Number	Total Weighted Votes for County	Weighted vote for each Representative	Present Number	Weighted Vote
Flagler	4,566	.0922	1	.10326	.103	1/2	.040
Dixie	4,479	.0905	1	.10136	.101	1/3	.039
Liberty	3,138	.0634	1	.07101	.071	1/4	.027
Glades	2,950	.0596	1	.06675	.067	1/3	.026
Lafayette	2,889	.0583	1	.06530	.065	1/3	.025
Gilchrist	2,868	.0579	1	.06485	.065	1/3	.025
TOTALS	4,951,560	99.9998%	112	111.99977		43	42.998

[fol. 21]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

ORDER DEFERRING HEARING—March 1, 1966

The Plaintiff and Defendant, Dade County Supervisor of Registration, having filed a "Joint Petition to Carry Out Order of U. S. Supreme Court," and having requested an early hearing thereon, and it appearing that no mandate or judgment has been received by the Clerk of this Court from the Supreme Court of the United States and that until the mandate or a judgment has been received this Court is without jurisdiction to consider the Petition, it is

ORDERED that a hearing on said Petition be deferred until a time to be set after receipt by this Court of the mandate or judgment of the Supreme Court of the United States.

Enter for the Court: March 1, 1966

David W. Dyer, United States District Judge.

[File endorsement omitted]

[fol. 22]

SUPREME COURT OF THE UNITED STATES

No. 973—October Term, 1965

RICHARD H. M. SWANN, et al., Appellants,

v.

TOM ADAMS, Secretary of State of Florida, et al.

JUDGMENT FILED IN DISTRICT COURT—March 7, 1966

Appeal from the United States District Court for the Southern District of Florida.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Florida for further proceedings in conformity with the opinion of this Court.

It is further ordered that the said appellants, Richard H. M. Swann, et al., recover from Tom Adams, Secretary of State of Florida, et al., One Hundred Dollars ($100) for their costs herein expended.

February 25, 1966

Clerk's costs $100

A true copy
Test:

John F. Davis, Clerk of the Supreme Court of the United States.

[File endorsement omitted]

[fol. 23]

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

March 3, 1966

Joseph I. Bogart, Esquire
Clerk, U. S. District Court for the
Southern District of Florida
Miami, Florida

Re: Swann et al. v. Adams et al.,
No. 973, Oct. Term, 1965
(Your No. 186-62-M-Civ)

Dear Mr. Bogart:

Enclosed is a certified copy of the judgment of this Court in the above-entitled case.

Kindly acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

John Davis, Clerk
By Evelyn R. Limstrong
(Mrs.) Evelyn R. Limstrong
Assistant

Encl.

Air Mail
Special Delivery

[fol. 24]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

NOTICE OF HEARING—Filed March 8, 1966

Take Notice that the Court will hear all matters pending and undisposed of in the above-entitled cause:

on Tuesday, March 15, 1966, at 11 A.M. in the Central Courtroom at the Post Office Building, Miami, Florida

Argument will be confined to counsel for parties to the cause and not from amici curiae.

By Order of the Court:

J. I. Bogart, Clerk

Date: Mar 8 1966

cc: Honorable Warren L. Jones, United States Circuit Judge;

Honorable David W. Dyer, United States District Judge;

Honorable William A. McRae, Jr., United States District Judge.

BB/ci

[fol. 25] Parties in Suit

Paul and Sams, Esqs., 1314 First National Bank Building, Miami, Florida, Attorneys for Plaintiff Richard H. M. Swann.

Honorable Earl Faircloth, Attorney General, State of Florida, Tallahassee, Florida, Attorney for Defendant Tom Adams.

[File endorsement omitted]

John U. Lloyd, Esq., Office of Broward County Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, Attorney for Hon. L. B. Gates, Supervisor of Registration of Broward County, Florida.

Thomas C. Britton, Esq., Office of Dade County Attorney, 1626 Dade County Courthouse, Miami, Florida, Attorney for Hon. Claude Brown, Supervisor of Registration of Dade County.

Paul E. Sawyer, Esq., P. O. Box 571, Key West, Florida, Attorney for Hon. W. B. Freeman, Supervisor of Registration of Monroe County.

Parties Amici Curiae

Halley B. Lewis, Esq., P. O. Box 48, Ft. Myers, Florida.

Honorable John E. Mathews, Jr., 1530 Lynch Building, Jacksonville, Florida.

Mallory E. Horne, Esq., P. O. Box 228, Tallahassee, Florida.

William G. O'Neill, Esq., P. O. Box 253, Ocala, Florida.

[fol. 26]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

MOTION TO ADOPT REAPPORTIONMENT PLAN—
Filed March 14, 1966

Comes Now the Defendant, Tom Adams, Secretary of State of the State of Florida, by and through his undersigned attorney and files this his motion to adopt the present apportionment plan of Florida, to-wit: House Bill 17-X(66), Chapter 66-1, Laws of Florida, duly passed and enacted on March 9, 1966, by the Special Session of the Florida Legislature, convened at the Governor's call of February 26, 1966, and for grounds thereof states:

1. That the Legislature of the State of Florida assembled as aforesaid did enact House Bill 17-X. The act provides for a bicameral Legislature of 48 Senators and 117 Representatives, a copy of said plan together with exhibits is attached hereto and made a part of this petition as though set out in haec verba.

2. That the maximum population variance ratio in the reapportioned Senate of the State of Florida is 1.30 to 1. 48.61% of the population elect 50% of the Senate. The average population per Senator is 103,158. The smallest senatorial district is 87,847 and the largest is 114,053, or a maximum population variance ratio of 1.30 to 1.

[fol. 27] 3. That the maximum population variance ratio in the reapportioned House of Representatives of the State of Florida is 1.41 to 1. 50.43% of the population elect 50.43% of the House of Representatives. The average population per member is 42,321. The smallest representative

[File endorsement omitted]

district is 34,584 and the largest is 48.785, or a maximum population variance ratio of 1.41 to 1.

4. The Defendant herein urges this court that the plan afore described complies with the standards of *Reynolds* v. *Sims*, 377 U. S. 533 (1964). See also *Lucas* v. *Colorado General Assembly*, 377 U.S. 713, and *Harrison* v. *Schaefer*, 34 L.W. 3294.

5. The Defendant further urges that the plan complies with the standards set forth in *Fortson* v. *Dorsey*, 379 U.S. 433; *Davis* v. *Mann*, 377 U.S. 678; and *Crawford City Bar Assn* v. *Faubus and Alexander* v. *Faubus*, 34 L.W. 3294, in the use of multi-county, multi-member and single-member districts.

Wherefore we respectfully submit that the plan be approved by this Honorable Court as meeting the Supreme Court standards for valid reapportionment in the State of Florida.

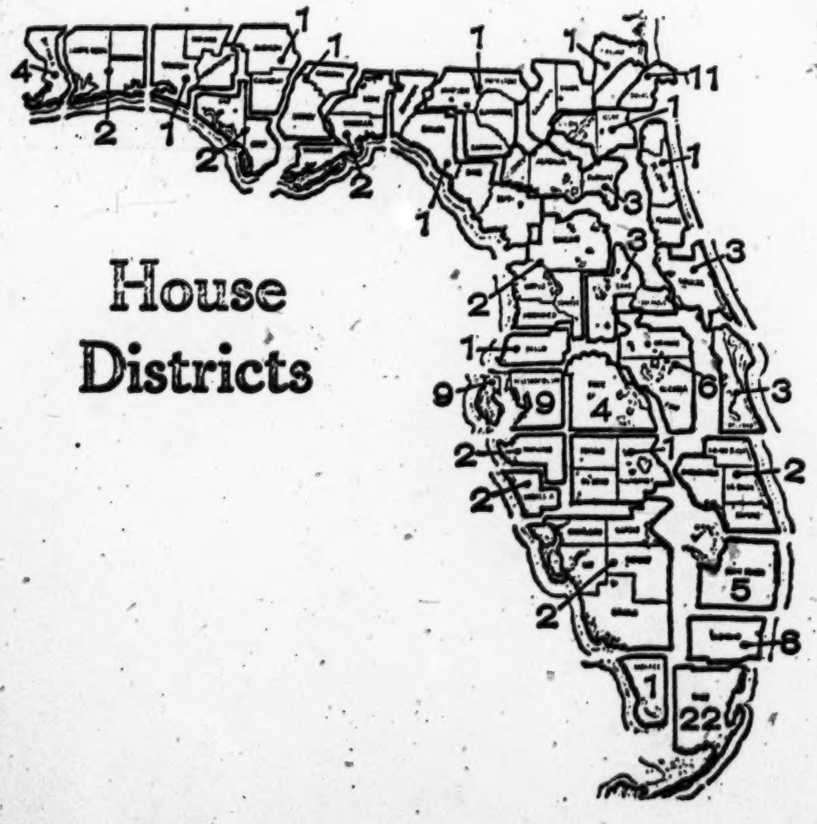
Earl Faircloth, Attorney General, Edward D. Cowart, Assistant Attorney General.

[fol. 28] Certificate of Service (omitted in printing).

Here Is New Distribution Of Florida's Legislature

TALLAHASSEE (AP)—Here is the distribution of seats by congressional districts under the 48-Senator, 117-Representative reapportionment plan that became law yesterday.

SENATE	HOUSE
1st Congressional District	
Escambia and Santa Rosa . 2	Escambia 4
Okaloosa, Walton and Holmes 1	Okaloosa and Santa Rosa .. 2
Washington, Bay and Gulf 1	Bay and Gulf 2
	Holmes, Washington and Walton 1
2nd Congressional District	
Jackson, Calhoun, Gadsden, Liberty, Franklin, Wakulla, Leon, Jefferson, Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker and Nassau 4	Jackson and Calhoun 1
	Gadsden and Liberty 1
	Leon, Wakulla and Franklin 2
	Jefferson, Taylor, Dixie and Levy 1
	Madison, Hamilton, Suwannee and Lafayette 1
	Gilchrist, Alachua and Putnam 3
	Union, Bradford and Clay . 1
	Columbia, Baker and Nassau 1
3rd Congressional District	
Duval 4	Duval 11
4th Congressional District	
St. Johns, Flagler, Volusia, Seminole, Lake, Osceola, Marion, Citrus, Hernando and Pasco 4	Citrus, Hernando, Marion and Sumter 2
	Flagler and St. Johns 1
	Lake and Seminole 3
	Pasco 1
	Volusia 3
	(Osceola tacked to Orange in 5th)
5th Congressional District	
Orange 3	Orange and Osceola 6
Brevard 1	Brevard 3
6th Congressional District	
Hillsborough 4	Hillsborough 9
7th Congressional District	
Manatee, Sarasota, Hardee, DeSoto and Highlands .. 2	DeSoto, Hardee and Highlands 1
Polk 2	Manatee 2
	Polk 4
	Sarasota 2
8th Congressional District	
Pinellas 4	Pinellas 9
9th Congressional District	
Indian River, Okeechobee, St. Lucie and Martin 1	Charlotte, Collier, Glades, Henry and Lee 2
Charlotte, Glades, Hendry, Lee and Collier 1	Indian River, Martin, Okeechobee and St. Lucie 2
Palm Beach 2	Palm Beach 5
10th Congressional District	
Broward 3	Broward 8
(North Dade added to 11th and 12th Districts)	
11th and 12th Congressional Districts	
Dade and Monroe, ... 9	Dade 22
	Monroe 1



[fol. 29]

EXHIBIT TO MOTION

43

43

[fol. 30] HB 17-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District—Escambia and Santa Rosa counties.

Second District—Escambia and Santa Rosa counties.

Third District—Okaloosa, Walton and Holmes counties.

Fourth District—Bay, Washington and Gulf counties.

Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

[fol. 31] Seventh District—Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District—Duval county.

Tenth District—Duval county.

Eleventh District—Pinellas county.

Twelfth District—Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District—Dade and Monroe counties.

Fourteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District—Dade and Monroe counties.

Eighteenth District—Duval county.

[fol. 32] Nineteenth District—Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District—Orange county.

Twenty-First District—Hillsborough county.

Twenty-Second District—Hillsborough county.

Twenty-Third District—Hillsborough county.

Twenty-Fourth District—Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District—Polk county.

Twenty-Seventh District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

[fol. 33] Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District—Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the secretary of state as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

[fol. 34] Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of

1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

[fol. 35]

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11

County or Counties	*Number of Members*
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

[fol. 36] (2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake county and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

[fol. 37] Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

[fol. 38]

HOUSE OF REPRESENTATIVES

COUNTY		INCUMBENT
ALACHUA-GILCHRIST-PUTNAM (3)		
	Group 1	
	Group 2	
	Group 3	
BAKER-COLUMBIA-NASSAU (1)		
	———	
BAY-GULF (2)		
	Group 1	
	Group 2	
BRADFORD-CLAY-UNION (1)		
	———	
BREVARD (3)		
	Group 1	
	Group 2	
	Group 3	
BROWARD (8)		
	Group 1	
	Group 2	
	Group 3	
	Group 4	
	Group 5	
	Group 6	
	Group 7	
	Group 8	
CALHOUN-JACKSON (1)		
	———	
CHARLOTTE-COLLIER-GLADES-HENDRY-LEE (2)		
	Group 1	(LEE RESIDENT)
	Group 2	(OTHER COUNTY RESIDENT)
CITRUS-HERNANDO-MARION-SUMTER (2)		
	Group 1	
	Group 2	

CLAY (See Bradford)

COLLIER (See Charlotte)

COLUMBIA (See Baker)

DADE (22)

Group 1
Group 2
Group 3
Group 4
Group 5
Group 6
Group 7
Group 8
Group 9
Group 10
Group 11
Group 12
Group 13
Group 14
Group 15
Group 16
Group 17
Group 18
Group 19
Group 20
Group 21
Group 22

[fol. 39]

DESOTO-HARDEE-HIGHLANDS (1) _____

DIXIE-JEFFERSON-LEVY-TAYLOR (1) _____

DUVAL (11)

Group 1
Group 2
Group 3
Group 4
Group 5

Group 6
Group 7
Group 8
Group 9
Group 10
Group 11

ESCAMBIA (4)
Group 1
Group 2
Group 3
Group 4

FLAGLER-ST. JOHNS (1)

FRANKLIN-LEON-WAKULLA (2)
Group 1
Group 2

GADSEN-LIBERTY (1)

GILCHRIST (See Alachua)

GLADES (See Charlotte)

GULF (See Bay)

HAMILTON-LAFAYETTE-MADISON-SUWANNEE (1)

HARDEE (See DeSoto)

HENDRY (See Charlotte)

HERNANDO (See Citrus)

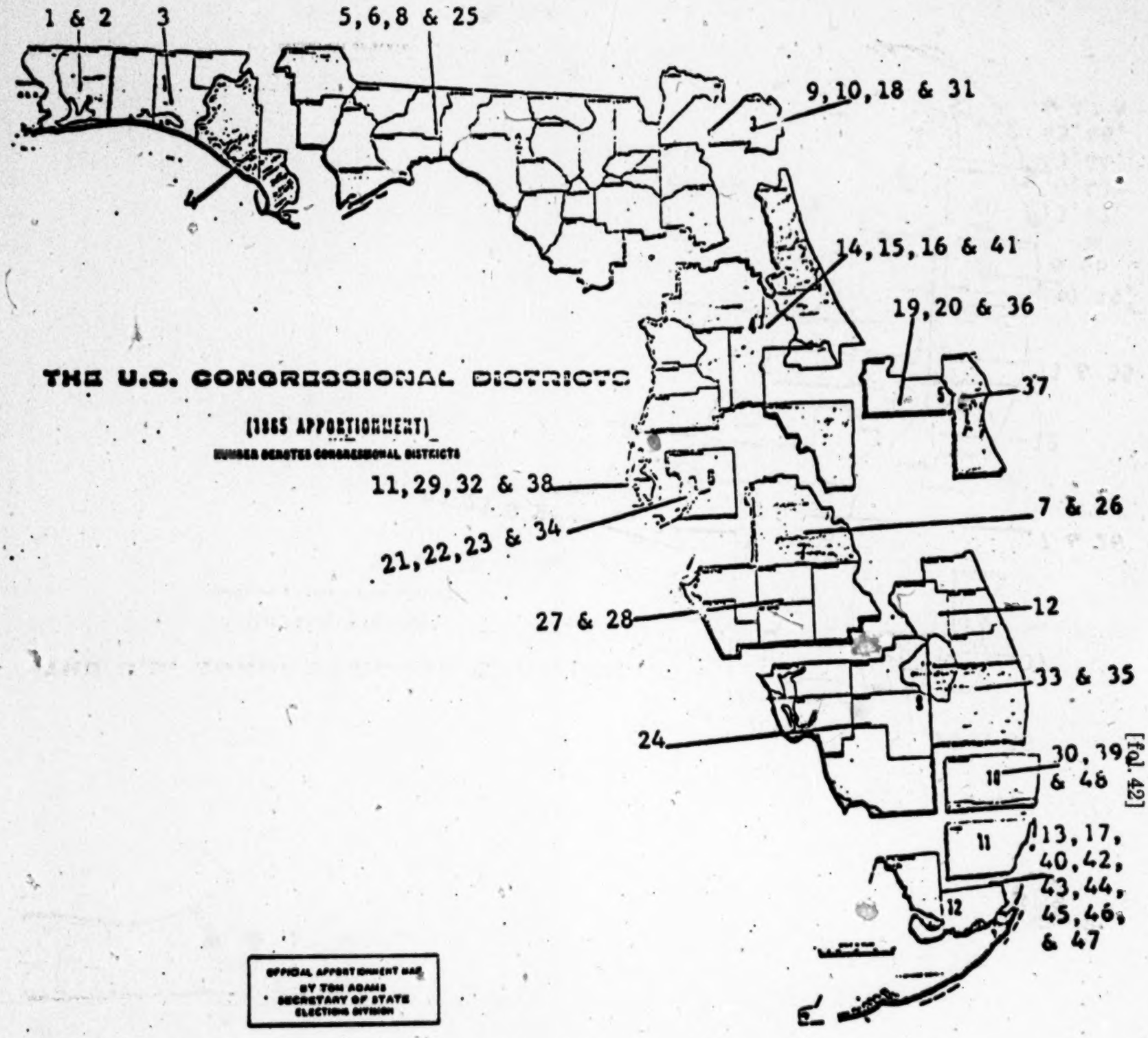
HIGHLANDS (See DeSoto)

HILLSBOROUGH (9)
Group 1
Group 2
Group 3
Group 4
Group 5
Group 6
Group 7

	Group 8	
	Group 9	
HOLMES-WALTON-WASHINGTON (1)	———	
INDIAN RIVER-MARTIN-OKEECHOBEE-ST. LUCIE (2)		
	Group 1	(ST. LUCIE RESIDENT)
	Group 2	(ANY COUNTY RESIDENT)
JACKSON (See Calhoun)		
[fol. 40]		
JEFFERSON (See Dixie)		
LAFAYETTE (See Hamilton)		
LAKE-SEMINOLE (3)	Group 1	(LAKE RESIDENT)
	Group 2	(SEMINOLE RESIDENT)
	Group 2	(EITHER COUNTY RESIDENT)
LEE (See Charlotte)		
LEON (See Franklin)		
LEVY (See Dixie)		
LIBERTY (See Gadsden)		
MADISON (See Hamilton)		
MANATEE (2)	Group 1	
	Group 2	
MARION (See Citrus)		
MARTIN (See Indian River)		
MONROE (1)	———	
NASSAU (See Baker)		
OKALOOSA—SANTA ROSA (2)	Group 1	
	Group 2	

OKEECHOBEE (See Indian River)	
ORANGE-OSCEOLA (6)	Group 1
	Group 2
	Group 3
	Group 4
	Group 5
	Group 6
OSCEOLA (See Orange)	
PALM BEACH (5)	Group 1
	Group 2
	Group 3
	Group 4
	Group 5
PASCO (1)	———
PINELLAS (9)	Group 1
	Group 2
	Group 3
	Group 4
	Group 5
	Group 6
	Group 7
	Group 8
	Group 9
[fol. 41]	
POLK (4)	Group 1
	Group 2
	Group 3
	Group 4
PUTNAM (See Alachua)	
ST. JOHNS (See Flagler)	
ST. LUCIE (See Indian River)	

SANTA ROSA (See Okaloosa)	
SARASOTA (2)	Group 1
	Group 2
SEMINOLE (See Lake)	
SUMTER (See Citrus)	
SUWANNEE (See Hamilton)	
TAYLOR (See Dixie)	
UNION (See Bradford)	
VOLUSIA (3)	Group 1
	Group 2
	Group 3
WAKULLA (See Franklin)	
WALTON (See Holmes)	
WASHINGTON (See Holmes)	



[fol. 42]

48 SENATOR PLAN

48 Senatorial Districts

Maximum population - variance ratio 1.30 - 1

48.61 % of the population elects 50 % of the Senate

Senatorial District	Counties	Number of Sen.	Total Population	Avg. population per Senator	% Variation Under Average	% Variation Over Average
1,2	Escambia & Santa Rosa	2	203,376	101,688	1.46	
3	Okaloosa, Walton & Holmes	1	87,595	87,595	15.09	
4	Washington, Bay & Gulf	1	88,317	88,317	14.39	
5,6,8,25	Jackson, Calhoun Gadsden, Liberty, Franklin, Wakulla, Leon, Jefferson, Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker & Nassau	4	443,885	110,971		7.57
9,10,18,31	Duval	4	455,411	113,853		10.37
14,15,16 41	St.Johns, Flagler, Volusia, Seminole, Lake, Osceola, Sumter, Marion, Citrus, Hernando,& Pasco	4	412,021	103,005	0.15	
19,20,36	Orange	3	263,540	87,847	14.84	
37	Brevard	1	111,435	111,435		8.02
11,29,32, 38	Pinellas	4	374,665	93,666	9.20	
21,22,23, 34	Hillsborough	4	397,788	99,447	3.60	
27,28	Manatee, Sarasota, Hardee, DeSoto,& Highlands	2	191,454	95,727	7.20	
7,26	Polk	2	195,139	97,570	5.42	
12	Indian River, Okeechobee, St. Lucie & Martin	1	87,959	87,959	14.73	

[fol. 43]

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1

[fol. 44]

Senatorial District	Counties	Number of Sen.	Total Population	Avg. population per Senator	% Variation Under Average	% Variation Over Average
24	Charlotte, Glades Hendry, Lee & Collier	1	93,955	93,955	8.92	
33,35	Palm Beach	2	228,106	114,053		10.56
30,39,48	Broward	3	333,946	111,315		7.91
13,17,40, 42,43,44 45,46,47	Dade & Monroe	9	982,968	109,219		5.88
	TOTALS	48	4,951,560	103,158		
	15% below average			87,684		
	15% above average			118,632		

(32 Election Districts)

117 Member House = 42,321 Average

15% of Average = 6,348

15% Population Variance	
Min.	Max
35,973	48,669

Pop. Dist. = High 48,735 / Low 34,584 = 1.41 to 1 Population Variance Ratio

50.43% of the population elects 50.43% of the House

Percent Variance	County or Counties	Number of Members	Population	Average Population per Member
-8.95	Bay and Gulf	2	77,068	38,534
2.68	Escambia	4	173,829	43,457
-10.99	Holmes, Walton and Washington	1	37,669	37,669
7.18	Okaloosa and Santa Rosa	2	90,722	45,361
3.09	Jackson and Calhoun	1	43,630	43,630
6.63	Gadsden and Liberty	1	45,127	45,127
1.67	Leon, Wakulla, Franklin	2	86,058	43,029
-11.27	Jefferson, Dixie, Taylor, Levy	1	37,554	37,554
-6.17	Hamilton, Suwannee, Madison, Lafayette	1	39,709	39,709
-14.03	Gilchrist, Putnam, Alachua	3	109,154	36,385
-10.15	Union, Bradford, Clay	1	38,024	38,024
5.45	Nassau, Baker, Columbia	1	44,629	44,629
-2.17	Duval	11	455,411	41,401
-0.81	Citrus, Hernando, Marion, Sumter	2	83,958	41,979
-18.24	Flagler, St. Johns	1	34,600	34,600
-11.53	Lake, Seminole	3	112,330	37,443
-13.08	Pasco	1	36,785	36,785
-1.29	Volusia	3	125,319	41,773
-12.23	Brevard	3	111,435	37,145
11.28	Orange, Osceola	6	282,569	47,095
4.44	Hillsborough	9	397,788	44,199
7.25	DeSoto, Hardee, Highlands	1	45,391	45,391
-18.28	Manatee	2	69,168	34,584
15.27	Polk	4	195,139	48,785
-9.15	Sarasota	2	76,895	38,448
-1.64	Pinellas	9	374,665	41,629
11.00	Charlotte, Collier, Glades, Hendry, Lee	2	93,955	46,978
3.92	Indian River, Martin, Okeechobee, St. Lucie	2	87,959	43,980
7.80	Palm Beach	5	228,106	45,621
-1.37	Broward	8	333,946	41,743
0.43	Dade	22	935,047	42,502
18.23	Monroe	1	47,921	47,921
	2 TOTAL (1961)		4,951,560	

[fol. 45]

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[fol. 46]
HB 23-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act relating to elections; amending Section 100.071, Florida Statutes; providing for the grouping of candidates for the legislature from the same election district; providing for an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 100.071, Florida Statutes, is amended to read:

100.071 *Grouping of candidates on primary ballots.*—

(1) Where two or more similar offices are to be filled in the same election, the names of candidates are placed or printed upon the ballot or voting machine in groups; that is, if two or more places on the supreme court, or two or more members of the legislature from the same election district are to be elected, then the candidates' names are placed or printed on the ballot or voting machines in groups, such as group 1, group 2, group 3 as the case may be.

The name of the office shall be printed over each numbered group and each numbered group clearly separated from the next numbered group, the same as in the case of single offices, so as to emphasize the necessity of voting for one candidate in each of the numbered groups.

(2) Nominees of recognized political parties chosen in primaries are in the same numbered group on the general [fol. 47] election ballot in which their names appeared on the primary election ballot.

Section 2. This act shall take effect immediately upon becoming a law.

[fol. 48]
CSHB 24-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act relating to elections; declaring previous qualifications to be null and void; establishing qualifying dates for candidates for nomination to legislative offices to be filled in the 1966 elections; providing for the qualifying fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. All qualifications filed with the secretary of state by candidates for the nomination of any recognized political party for offices of state senator and member of the state house of representatives under the plan of apportionment set out in Chapter 65-2440, Laws of Florida, 1965, for the 1966 elections are hereby declared to be null and void and of no force and effect. The secretary of state shall immediately return to all such candidates who qualified with him all qualification fees and party assessments. Any contributions or expenditures made to or by a candidate for nomination under the aforesaid qualification shall, if valid at the time it was made, not be rendered invalid by the adoption of this act or any plan of apportionment subsequent to Chapter 65-2440, Laws of Florida, 1965. Any candidate qualifying under a plan of apportionment subsequent to Chapter 65-2440, Laws of Florida, 1965, who, by virtue of his previous qualification, has received such contributions or incurred such expenditures shall report them in the manner prescribed by Section 99.021(1)(k), Florida

Statutes, at the time he qualifies under such later plan or act.

Section 2. Notwithstanding the provisions of Section [fol. 49] 99.061(1), Florida Statutes, 1965, candidates for nomination of any recognized political party for offices of state senator and member of the state house of representatives in the 1966 elections only under a plan of apportionment adopted subsequent to Chapter 65-2440, Laws of Florida, 1965, are required to file with the secretary of state their qualification papers, pay the qualification fees, and party assessment, at any time after noon of the day following the effective date of such act providing for the apportionment of the membership of the legislature of the state of Florida but not later than noon of March 18, 1966.

Section 3. The provisions of this act shall apply only to candidates for nomination to legislative office in the 1966 elections and shall supersede the election code only where inconsistent therewith. This act shall not be printed in the Florida Statutes, prepared by the Statutory Revision Department of the Attorney General's office.

Section 4. This act shall take effect immediately upon becoming law.

[fol. 50]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

SUGGESTED MODIFICATION TO THE PLAN OF APPORTIONMENT CONTAINED IN HB 17-X ENACTED BY THE LEGISLATURE ON MARCH 9, 1966—Filed March 15, 1966

The Plaintiff and the Defendant Supervisor of Elections of Dade County, Florida, respectfully submit the following modifications to the plan of legislative apportionment contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966, to the Court for consideration:

SENATE

Districts	Plan Adopted by Legislature				Suggested Modification			
	Counties	Population	No. of Senators	Deviation	Counties	Population	No. of Senators	Deviation
1, 2	Escambia Santa Rosa	203,376	2	+1.4	No change			
3	Okaloosa Walton Holmes	87,595	1	+15.1	Okaloosa Walton Holmes Washington	98,844	1	+4.2
4	Bay Washington Gulf	88,317	1	+14.4	Bay Gulf Calhoun Liberty Franklin	94,204	1	+8.7

[File endorsement omitted]

SENATE - continued

Districts	Plan Adopted by Legislature				Suggested Modification			
	Counties	Population	No. of Senators	Deviation	Counties	Population	No. of Senators	Deviation
5, 6, 8, 25	Alachua Baker Bradford Calhoun Clay Columbia Dixie Franklin Gadsden Gilchrist Hamilton Jackson Jefferson Lafayette Leon Levy Liberty Madison Nassau Putnam Suwannee Taylor Union Wakulla	443,885	4	- 7.6	Alachua Baker Bradford Clay Columbia Dixie Gadsden Gilchrist Hamilton Jackson Jefferson Lafayette Leon Levy Madison Nassau Putnam Suwannee Taylor Union Wakulla	426,749	4	- 3.4
7, 26	Polk	195,139	2	+ 5.4	No Change			
9, 10, 18, 31	Duval	455,411	4	- 10.4	No Change			
11, 29 32, 38	Pinellas	374,665	4	+9.2	No Change			
12	Indian River Martin St. Lucie Okeechobee	87,959	1	+14.7	Indian River Martin St. Lucie Glades Hendry	92,704	1	+10.1
13, 17, 40, 42, 43 44, 45, 46, 47	Dade Monroe	982,968	9	- 5.9	No Change			

[fol. 51]

SENATE - continued

Districts	Plan Adopted by Legislature				Suggested Modification			
	Counties	Population	No. of Senators	Deviation	Counties	Population	No. of Senators	Deviation
14, 15, 16, 41	Citrus Flagler Hernando Lake Marion Osceola Pasco St. Johns Seminole Sumter Volusia	412,021	4	+ 0.1	Citrus Flagler Hernando Lake Marion Pasco St. Johns Seminole Sumter Volusia	392,992	4	+ 4.8
19,20,36	Orange	263,540	3	+14.8	Orange Osceola	282,569	3	+ 8.7
21, 22, 23, 34	Hillsborough	397,788	4	+ 3.6	No Change			
24	Charlotte Collier Glades Hendry Lee	93,955	1	+ 8.9	Charlotte Collier Lee DeSoto	94,569	1	+ 8.3
27, 28	DeSoto Hardee Highlands Manatee Sarasota	191,454	2	+ 7.2	Hardee Highlands Manatee Sarasota Okeechobee	186,189	2	+ 9.8
30,39,48	Broward	333,946	3	- 7.9	No Change			
33, 35	Palm Beach	228,106	2	- 10.6	No Change			
37	Brevard	111,435	1	- 8.0	No Change			

[fol. 52]

The suggested modifications reduce the maximum single deviation from complete mathematical equality from 15.1 percent to 10.6 percent.

The map attached hereto as Exhibit A reflects both the plan of Senate apportionment contained in HB 17-X and the modifications suggested above.

HOUSE OF REPRESENTATIVES

Plan Adopted by Legislature				Suggested Modification			
Counties	Population	No. of Representatives	Deviation	Counties	Population	No. of Representatives	Deviation
Bay Gulf	77,068	2	+8.9	No Change		2	
Escambia	173,859	4	-2.7	No Change		4	
Holmes Walton Washington	37,669	1	+11.0	No Change		1	
Okaloosa Santa Rosa	90,722	2	- 7.2	No Change		2	
Jackson Calhoun	43,630	1	- 3.1	No Change		1	
Gadsden Liberty	45,127	1	- 6.6	See below			
Leon Wakulla Franklin	86,058	2	- 1.7	Gadsden Liberty Leon Franklin	125,928	3	+ 0.8
Jefferson Dixie Taylor Levy	37,504	1	+11.3	Jefferson Wakulla Taylor Madison	42,122	1	+ 0.5
Hamilton Suwannee Madison Lafayette	39,709	1	+6.2	Hamilton Suwannee Columbia	42,743	1	- 1.0
Gilchrist Putnam Alachua	109,154	3	+14.0	Alachua Marion	125,690	3	+ 1.0
Union Bradford Clay	38,024	1	+10.2	Union Bradford Baker Nassau	43,041	1	- 1.7

[fol. 53]

HOUSE OF REPRESENTATIVES - continued

Plan Adopted by Legislature				Suggested Modification			
Counties	Population	No. of Representatives	Deviation	Counties	Population	No. of Representatives	Deviation
Nassau Baker Columbia	44,629	1	— 5.5	See above			
Duval	455,411	11	+ 2.2	No Change		11	
Citrus Hernando Marion Sumter	83,958	2	+ 0.8	See below			
Pasco	36,785	1	+ 13.1	Pasco Levy Gilchrist Lafayette Dixie Citrus Hernando	77,858	2	+ 8.0
Flagler St. Johns	34,600	1	+ 18.2	Flagler St. Johns Clay Putnam	86,347	2	— 2.0
Lake Seminole	112,330	3	+ 11.5	Lake Seminole Sumter	124,199	3	+ 2.2
Volusia	125,319	3	+ 1.3	No change		3	
Brevard	111,435	3	+ 12.2	Brevard Osceola	130,464	3	— 2.8
Orange Osceola	282,569	6	— 11.3	Orange	263,540	6	— 3.8
Hillsborough	397,788	9	— 4.4	No change		9	
DeSoto Hardee Highlands	45,391	1	— 7.3	DeSoto Lee Charlotte	78,816	2	+ 6.9
Manatee	69,168	2	+ 18.3	Manatee Hardee	81,538	2	+ 3.7

[fol. 54]

HOUSE OF REPRESENTATIVES - continued

Plan Adopted by Legislature				Suggested Modification			
Counties	Population	No. of Representatives	Deviation	Counties	Population	No. of Representatives	Deviation
Polk	195,139	4	— 15.3	Polk Highlands	216,477	5	— 2.3
Sarasota	76,889	2	+ 9.2	No change		2	
Pinellas	374,665	9	+ 1.6	No change		9	
Charlotte Collier Glades Hendry Lee	93,955	2	- 11.0	Collier Glades Hendry Okeechobee Monroe	81,167	2	+ 4.1
Monroe	47,921	1	— 13.2	See above			
Indian River, Martin Okeechobee St. Lucie	87,959	2	— 3.9	Indian River, Martin St. Lucie	81,635	2	+ 3.6
Palm Beach	228,106	5	— 7.8	No change		5	
Broward	333,946	8	+ 1.4	No change		8	
Dade	935,047	22	— 0.4	No change		22	

[fol. 55]

The suggested modifications reduce the maximum single deviation from complete mathematical equality from 18.3 percent to 11 percent.

The map attached hereto as Exhibit B reflects both the plan of apportionment of seats in the House of Representatives contained in HB17-X and the modifications suggested above.

[fol. 56] It is respectfully suggested that the three Senate "grandfathering" provisions be deleted.

It is respectfully suggested that the residence requirement pertaining to the 42nd Senatorial District (Dade and Monroe) be deleted.

It is respectfully suggested that the residence requirements contained in Section 3(2) of HB 17-X be deleted.

THOMAS C. BRITTON
Dade County Attorney
Attorney for the Supervisor of
Elections of Dade County, Florida
1626 Dade County Courthouse
Miami, Florida 33131

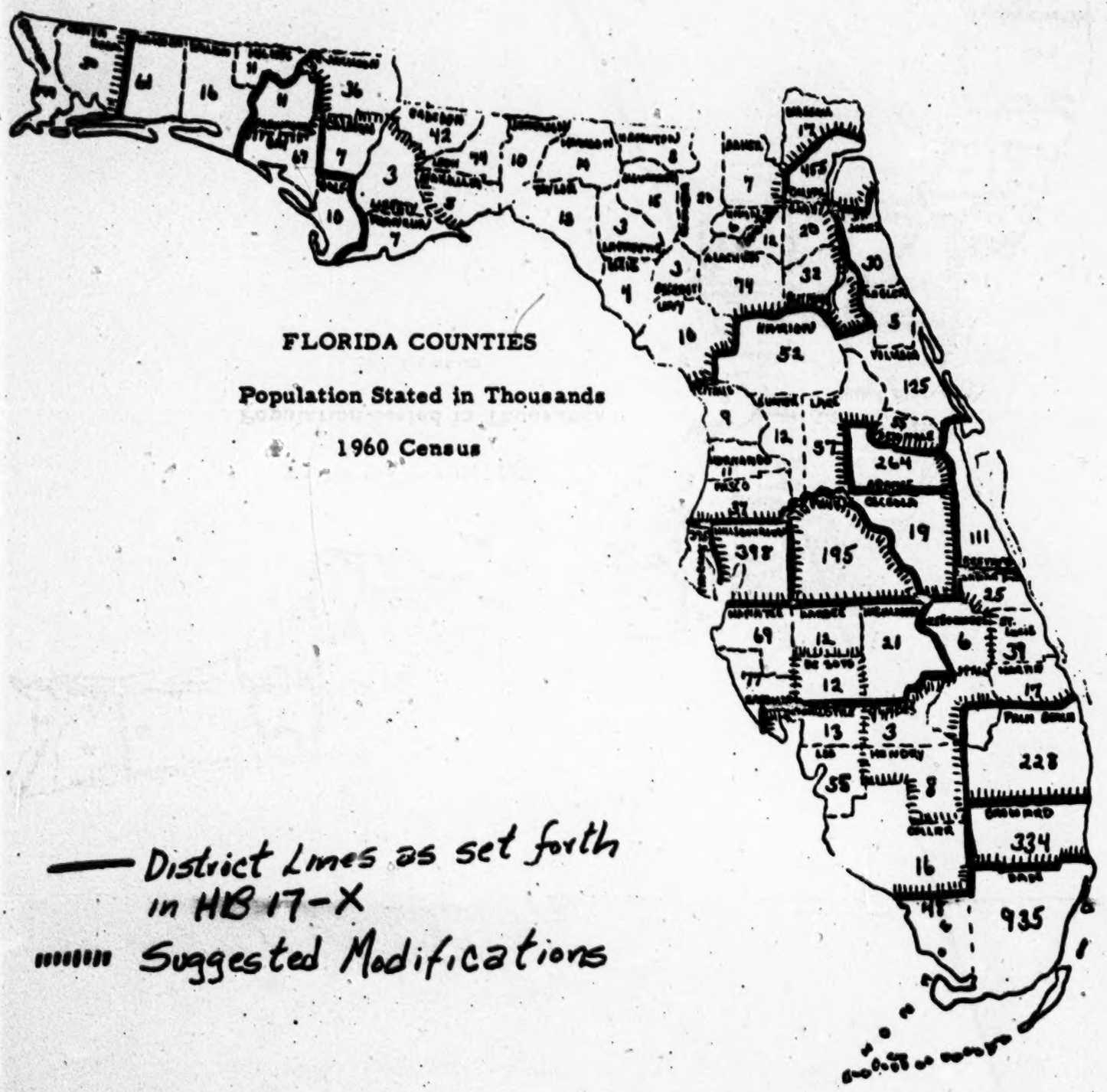
By /s/ STUART L. SIMON
Stuart L. Simon
Assistant County Attorney

PAUL & SAMS
Attorneys for the Plaintiff
1314 First National Bank Building
Miami, Florida 33131

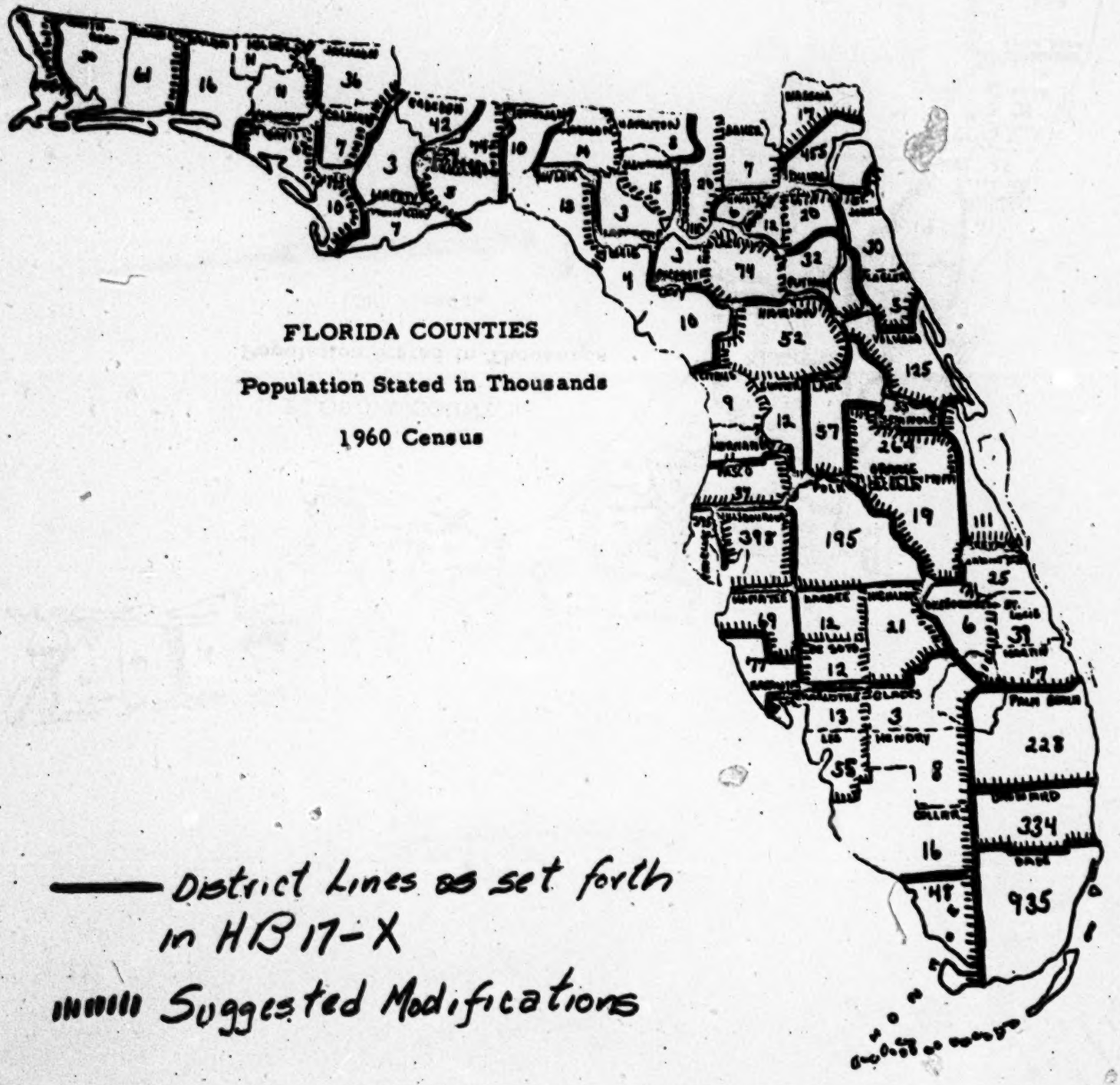
By /s/ DAN P. S. PAUL
Dan P. S. Paul

Certificate of Service (omitted in printing).

Apportionment of Florida Senate Under HB 17-X



Apportionment of Florida House of Representatives
Under HB 17-X



[fol. 59]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

ANALYSIS OF HB 17-X AS ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA ON MARCH 9, 1966—Filed March 15, 1966

The Plaintiff and the Defendant, Supervisor of Elections of Dade County, Florida, respectfully submit the following analysis of HB 17-X as enacted by the Legislature of the State of Florida on March 9, 1966 to the Court:

I

SENATE OF 48 DISTRICTS

Districts	County or Counties	No. of Senators	No. of Persons Who Ought to be Represented by the No. of Senators, Assuming Mathematically Equal Representation of all Persons	Actual Population Represented (1960 Census)	Difference between Mathematically Equal Population & Actual Population	
					In No. of Persons	As a % of Over or Under Representation
1, 2	Escambia Santa Rosa	2	206,316	203,376	2,940	1.4% over
3	Okaloosa, Walton, Holmes	1	103,158	87,595	15,563	15.1% over
4	Bay, Washington, Gulf	1	103,158	88,317	14,841	14.4% over

[File endorsement omitted]

5, 6, 8, 25	Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union, Wakulla	4	412,632	443,885	31,253	7.5% under
7, 26	Polk	2	206,316	195,139	11,177	5.4% over
9, 10, 18, 31	Duval	4	412,632	455,411	42,779	10.4% under
11, 29, 32, 38	Pinellas	4	412,632	374,665	37,967	9.2% over
12	Indian River, Martin, St. Lucie, Okeechobee	1	103,158	88,059	15,099	14.7% over
13, 17, 40, 42, 43, 44, 45, 46, 47,	Dade, Monroe	9	928,422	982,968	54,546	5.9% under
14, 15, 16, 41	Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter, Volusia	4	412,632	412,021	611	0.1% over
19, 20, 36,	Orange	3	309,464	263,540	45,934	14.8% over
21, 22, 23, 34	Hillsborough	4	412,632	397,788	14,844	3.6% over
24	Charlotte Collier, Glades, Hendry, Lee	1	103,158	93,955	9,203	8.9% over

[fol. 60]

27, 28	Desoto, Hardee, Highlands, Manatee, Sarasota	2	206,316	191,448	14,868	7.2% over
30, 39, 48	Broward	3	309,474	333,946	24,472	7.9% under
33, 35	Palm Beach	2	206,316	228,106	21,790	10.6% under
37	Brevard	1	103,158	111,435	8,277	8.0% under

II

HOUSE OF REPRESENTATIVES OF 117 MEMBERS

County or Counties	No. of House Members	No. of Persons Who Ought to be Represented by the No. of Members, Assuming Mathematically Equal Representation of all Persons	Actual Population Represented (1960 Census)	Difference between Mathematically Equal Population & Actual Population	
				In No. of Persons	As a % of Over or Under Representation
Bay, Gulf	2	84,642	77,068	7,574	8.9% over
Escambia	4	169,284	173,829	4,545	2.7% under
Holmes, Walton, Washington	1	42,321	37,669	4,652	11.0% over
Okaloosa, Santa Rosa	2	84,642	90,722	6,080	7.2% under
Jackson, Calhoun	1	42,321	43,630	1,309	3.1% under
Gadsden, Liberty	1	42,321	45,127	2,806	6.6% under
Leon, Wakulla, Franklin	2	84,642	86,058	1,416	1.7% under
Jefferson, Dixie, Taylor, Levy	1	42,321	37,554	4,767	11.3% over
Hamilton, Suwannee Madison, Lafayette	1	42,321	39,709	2,612	6.2% over
Gilchrist, Putnam, Alachua	3	126,963	109,154	17,809	14.0% over
Union, Bradford, Clay	1	42,321	38,024	4,297	10.2% over
Nassau, Baker, Columbia	1	42,321	44,629	2,308	5.5% under

[fol. 61]

Duval	11	465,531	455,411	10,120	2.2% over
Citrus, Hernando, Marion, Sumter	2	84,642	83,958	684	0.8% over
Flagler, St. Johns	1	42,321	34,600	7,721	18.2% over
Lake, Seminole	3	126,963	112,330	14,633	11.5% over
Pasco	1	42,321	36,785	5,536	13.1% over
Volusia	3	126,963	125,319	1,644	1.3% over
Brevard	3	126,963	111,435	15,528	12.2% over
Orange, Osceola	6	253,926	282,569	28,643	11.3% under
Hillsborough	9	380,889	397,788	16,899	4.4% under
DeSoto, Hardee, Highlands	1	42,321	45,391	3,070	7.3% under
Manatee	2	84,642	69,168	15,474	18.3% over
Polk	4	169,284	195,139	25,855	15.3% under
Sarasota	2	84,642	76,889	7,753	9.2% over
Pinellas	9	380,889	374,665	6,224	1.6% over
Charlotte, Collier, Glades, Hendry, Lee	2	84,642	93,955	9,313	11.0% under
Indian River, Martin, Okeechobee, St. Lucie	2	84,642	88,059	3,417	4.0% under
Palm Beach	5	211,605	228,106	16,501	7.8% under
Broward	8	338,568	333,946	4,622	1.4% over
Dade	22	931,062	935,047	3,985	0.4% under
Monroe	1	42,321	47,921	5,600	13.2% under

[fol. 62]

PAUL & SAMS
Attorneys for the Plaintiff
1314 First National Bank Building
Miami, Florida 33131

By D P S Paul
Dan P. S. Paul

THOMAS C. BRITTON
Dade County Attorney
Attorney for the Supervisor of
Elections of Dade County, Florida
1626 Dade County Courthouse
Miami, Florida 33130

By Stuart L. Simon
Stuart L. Simon
Assistant County Attorney

[fol. 63] Certificate of Service (omitted in printing).

[fol. 64]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 186-62-M-Civil-DD

RICHARD H. M. SWANN, Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al., Defendants.

Before Jones, Circuit Judge, and McRae and Dyer, District Judges.

PER CURIAM—March 18, 1966

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a popu-

[fol. 65] lation basis. Various tests have been used to analyze how close other plans have come to the ideal:

the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but col- [fol. 66] lectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be

continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord,* Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra.*

An order will be entered herein in accordance with the present opinion.

[fol. 67]

IN THE UNITED STATES DISTRICT COURT

ORDER—March 18, 1966

It is, upon consideration,

Ordered and Adjudged:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

Done and Ordered this 18th day of March, 1966.

Warren L. Jones, United States Circuit Judge, William A. McRae, Jr., United States District Judge, David W. Dyer, United States District Judge.

[fol. 68]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

[Title omitted]

NOTICE OF APPEAL BY SUPERVISOR OF ELECTIONS TO THE SUPREME COURT OF THE UNITED STATES—Filed March 25, 1966

I

Notice is hereby given that the Supervisor of Elections of Dade County, Florida, previously known as the Supervisor of Registration of Dade County, Florida, and one of the above named defendants, hereby appeals to the Supreme Court of the United States from the Order of the United States District Court for the Southern District of Florida entered in this action on March 18, 1966 at 9:38 A. M. Aforesaid order declared the plan of apportionment of the Florida Legislature as enacted by that Legislature in Special Session on March 9, 1966 met federal constitutional [fol. 69] standards, and refused to enjoin the use of such plan in electing the membership of the 1967 session of the Florida Legislature.

This appeal is taken pursuant to 28 U. S. C., Sec. 1253.

II

The Clerk will please prepare a transcript of the record in this cause for certification to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

[File endorsement omitted]

Papers Filed in Case No. 186-62-M (DD)

Name of Document	*Date of Filing*
1. All documents contained in the Record on Appeal already before the Supreme Court of the United States in Swann, et al., v. Adams, et al., Supreme Court No. 973, decided February 25, 1966	
2. Opinion of the Supreme Court of the United States in Swann, et al., v. Adams, et al., decided February 25, 1966	February 28, 1966
3. Joint Petition to Carry Out Order of United States Supreme Court with Exhibits A and B attached thereto	February 28, 1966
4. Order on Joint Petition	March 1, 1966
5. Judgment of the Supreme Court of the United States No. 973, October Term, 1965	March 7, 1966
6. Notice of Hearing	March 8, 1966
7. Motion to Adopt Reapportionment Plan, with HB 17-X(66) and Exhibits attached thereto	March 14, 1966
8. Analysis of HB 17-X As Enacted by the Legislature of the State of Florida on March 9, 1966	March 15, 1966
[fol. 70]	
9. Suggested Modifications to the Plan of Apportionment contained in HB 17-X Enacted by	

	Name of Document	*Date of Filing*
	the Legislature on March 9, 1966, with Exhibits A and B attached thereto	March 15, 1966
10.	Order Per Curiam	March 18, 1966
11.	Transcript of argument advanced to the Court on March 15, 1966	Still to be filed
12.	This Notice of Appeal	March 25, 1966
13.	The docket sheet reflecting all entries in this cause	

III

The following questions are presented by this appeal:

1. Does the refusal of the District Court to declare unconstitutional the plan of legislative apportionment contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966, to enjoin the use of such plan in subsequent elections to be held in the State of Florida, and to adopt a valid plan of apportionment for the election to be held for seats in the 1967 biennial session of the Florida Legislature or provide other appropriate relief, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

2. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State [fol. 71] of Florida on March 9, 1966 in which certain counties are over-represented to the extent of 18.28 percent and certain other counties are under-represented to the extent of 15.27 percent in the House of Representatives, deny to

the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

3. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 in which certain counties are over-represented to the extent of 15.09 percent and certain other counties are under-represented to the extent of 10.56 percent in the Senate, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

4. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 in which there are deviations from mathematical equality in excess of 15 percent in 7 of the 117 House of Representative Districts, and in which there are deviations from mathematical equality in excess of 10 percent in 29 of the 117 House of Representative Districts, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 [fol. 72] of the Fourteenth Amendment of the Constitution of the United States?

5. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 in which there are deviations from mathematical equality in excess of 14 percent in 6 of the 48 Senatorial Districts, and in which there are deviations from mathematical equality in excess of 10 percent

in 12 of the 48 Senatorial Districts, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

6. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 in which there is a clear pattern of under-representation for the populous urban counties and over-representation for the sparsely settled rural counties in both legislative houses, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

7. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 and containing the features [fol. 73] described in the foregoing questions deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, when the Court also had before it for consideration an apportionment plan jointly submitted by the Plaintiff and the Appellant at the invitation of the Court in which there was a maximum deviation or departure from mathematical equality of only 1.95 percent in the House of Representatives and a maximum deviation or departure from mathematical equality of only 3.35 percent in the Senate, and in which all electoral districts were geographically contiguous?

8. Does the refusal of the District Court to declare unconstitutional, arbitrary and unreasonable the reapportionment plan contained in HB 17-X enacted by the Legislature

of the State of Florida on March 9, 1966 and containing the features described in the foregoing questions deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, when the Court also had before it for consideration an apportionment plan jointly submitted by the Plaintiff and the Appellant which, through relatively minor modifications and adjustments to the plan contained in HB 17-X, reduced the maximum deviations or departures from mathematical equality from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives?

[fol. 74] 9. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X enacted by the Legislature of the State of Florida on March 9, 1966 in which three Senators are "grandfathered" or held over from the previous Senate while other Senators are not so "grandfathered" or held over, deny to the Plaintiff, persons represented by the Appellant, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

10. Did the District Court err in according a greater presumption of validity to the plan enacted by the Legislature in HB 17-X than to the alternative plans submitted by the Plaintiff and the Appellant when the plan contained in HB 17-X was enacted on March 9, 1966 by a malapportioned Legislature (still composed of representatives elected under statutes enacted in 1963 and declared unconstitutional by the Supreme Court of the United States on June 22, 1964) on the eighth occasion on which a malapportioned and unconstitutional Legislature had been convened since this litigation was commenced on March 28, 1962?

Thomas C. Britton, County Attorney, Stuart Simon, Assistant County Attorney, Attorneys for Defendant, Supervisor of Elections of Dade County, Florida, 1626 Dade County Courthouse, Miami, Florida 33130.

[fol. 75] Proof of Service (omitted in printing).

[fol. 77]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

[Title omitted]

NOTICE OF APPEAL BY RICHARD H. M. SWANN TO THE SUPREME COURT OF THE UNITED STATES—Filed March 25, 1966

Notice is hereby given that Richard H. M. Swann, Plaintiff herein, hereby appeals to the Supreme Court of the United States from the Order of the United States District Court for the Southern District of Florida entered in this action on March 18, 1966 at 9:38 A.M.

This appeal is taken pursuant to 28 U.S.C. Sec. 1253.

Plaintiff Richard H. M. Swann thus joins in the appeal previously filed herein by the Supervisor of Elections of Dade County, Florida, one of the above-named Defendants, and adopts by reference and incorporates herein in their [fol. 78] entirety Sections II and III of the Notice of Appeal filed by such Defendant on March 25, 1966.

D. P. S. Paul, P. D. Thomson, Paul & Sams, 1314 First National Bank Building, Miami, Florida 33131;
Richard F. Wolfson, 315 North Miami Avenue, Miami, Florida;

[File endorsement omitted]

Neal Rutledge, Rutledge & Milledge, 111 N.E. First Street, Miami, Florida 33131,
Attorneys for Plaintiff, Richard H. M. Swann.

[fol. 79] Proof of Service (omitted in printing).

[fol. 81]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 186-61-Civ-DD

RICHARD H. M. SWANN, Plaintiff,

vs.

TOM ADAMS, Secretary of State of the State of Florida, et al, Defendants.

Miami, Florida

TRANSCRIPT OF TESTIMONY—March 15, 1966

The above entitled matter came on for hearing before the Honorable Warren L. Jones, Circuit Judge, the Honorable David W. Dyer, District Judge and the Honorable William A. McRae, District Judge, at Miami, Florida, on the 15th day of March, 1966.

APPEARANCES:

Paul & Sams, by Daniel P. S. Paul, Esq., on behalf of the Plaintiff;

Hon. Earl Faircloth, Attorney General of Florida and Edward C. Cowart, Assistant Attorney General;
Thomas C. Britton, Esq., County Attorney of Dade County and Stuart L. Simon, Esq., Assistant County Attorney,

on behalf of the Defendants.

[fol. 82] Judge Jones: I suppose that the plaintiff opens. Mr. Paul, are you going to be the only one who is speaking for the plaintiff on this occasion?

Mr. Paul: Yes, your Honor.

Judge Jones: And the Attorney General has moved for the Secretary of State.

Mr. Faircloth: Mr. Edward Cowart, Assistant Attorney General, your Honor, will present the argument.

Judge Jones: Very well. How many of the intervenors desire to be heard this morning?

Mr. Britton: Your Honor, I am not an intervenor. I am here for the defendant, Supervisor of Registration of Dade County. I would like to be heard for a minute.

Judge Jones: How much time do you want?

Mr. Britton: Ten minutes.

Judge Jones: All right. Are there any other parties who will present argument this morning?

Mr. Paul, how much time will you need, do you think?

Mr. Paul: I think ten minutes would be ample, your [fol. 83] Honor.

Judge Jones: And for the Secretary?

Mr. Faircloth: Your Honor, it probably will not take twenty minutes, but I would like to be allowed that much time. We will present the argument for the Supervisor of Broward and the Supervisor for Monroe as well, so they will not be heard except through us.

Judge Jones: Are we ready to proceed? I take it that probably there will be no testimony offered to the Court, for the Court would judicially notice what the Legislature has done.

Is there any other evidence to be introduced at this hearing?

Mr. Faircloth: The State has none, your Honor, except the Exhibit, House Bill 17-X.

Judge Jones: Mr. Paul, do you have anything that you think we would need to have before us that is not before us?

Mr. Paul: No, your Honor, only the analysis and the suggested modifications which we filed this morning with the Clerk.

Judge Jones: That, I take it, is in the nature of briefs [fol. 84] rather than in the nature of evidence.

Mr. Paul: There is no argument submitted in that. It is an arithmetical analysis of the plan.

Judge Jones: I know; but the deductions are drawn from what is before the Court, I take it.

Mr. Paul: Not in the document which we filed, no.

Judge Jones: There isn't any admissible evidentiary matters in your analysis, is there?

Mr. Paul: No. I think it is properly denominated as a pleading.

Judge Jones: If we are ready to proceed, why, you may go forward, Mr. Paul.

STATEMENT BY MR. PAUL

Mr. Paul: May it please the Court, at the last hearing in this case, the Attorney General, in arguing that the Legislature should be given another chance, advised the Court at the 1965 special reapportionment session he had rendered a set of guide lines for the legislature in which he advised the legislature, and I quote: "The essence of the Supreme Court ruling is that every member of the Legislature must represent substantially, with no more [fol. 85] than a ten or fifteen per cent departure from absolute mathematical equality, the same number of people, so that each individual's right to vote for legislators will have the same weight."

Now, that malapportioned, unconstitutional legislature has now had another chance, its eighth. And the Attorney General has today filed a plan with this Court seeking its approval. Before that special session began two weeks ago, the Attorney General again furnished every member of the legislature with a document entitled, "Criteria and Guidelines for Reapportionment as Established by the Federal Court," in which he stated—and again I quote—

"The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than fifteen per cent would be difficult to sustain as complying with the one man-one vote.

"It is, therefore, respectfully submitted that a percentage variation not exceed fifteen per cent."

Now, I know of no better standard to judge this plan filed before the Court this morning than the standard laid [fol. 86] down by this Three-Judge Court in its own December 23rd opinion.

In that opinion, the Court will remember it stated, "Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen per cent allowance or variance allowed in Coombs vs. Fortson establishes a rule of tolerance that will be followed as a legal principle."

Now, I think clearly the plan which the legislature adopted last week does not meet that standard. We have filed with the Court today an analysis of that plan which shows in the Senate in one district there is a variation of 15.1 per cent over the ideal ratio, and in three districts, 14.4 and 14.7 and 14.8, respectively, over the ideal ratio.

We look at the analysis of the house plan and we find that two districts, both in rural counties, vary 18.2 and 18.3 per cent over the ideal ratio. And in one other district, a 14 per cent variance over the ratio. In another district we have one area that gains this time, a populous area, which is 15.3 per cent under the deviation or the maximum ideal. Adding those two together, we get in the House [fol. 87] plan a spread of about 33.6 per cent.

Now, I think it is interesting when we look at this analysis that this discrimination follows a pattern.

In the Senate, of the eleven over-represented districts, seven consist of the small rural counties with Okaloosa, Walton and Holmes leading the list, being 15.1 per cent over-represented. And of those in the Senate plan under-

represented by the largest percentage, of the six under-represented districts, five are the populous counties with Palm Beach leading the list with 10.6 per cent under-representation, followed closely by Duval with 10.4 per cent under-representation.

In the House plan we find the same pattern of invidious discrimination. Eleven of the 17 over-represented districts consist of the small counties with Manatee leading the list with 18.3 and a second small county following closely behind with 18.2. And of those under-represented, Polk, a large county, leads the list of under-represented districts with 15.3 per cent under-representation.

I think on further analysis, it is interesting to note that these variations are not ones which in the language of this [fol. 88] Court's Opinion could not be avoided; unless one can read that language to mean, could not be avoided without some legislator losing his seat.

For example, in the House district in which Orange County, a populous county, is grouped, six are assigned under the House plan. Under the ideal ratio for that number of seats this population should be 253,000. The population of Orange County is 263,000. Therefore, Orange, a populous county, would have been under-represented in that district by itself. What did the Legislature do? They put Osceola in that district to increase Orange County's already under-represented status to 11.3 per cent. That clearly cannot be claimed that discrimination has any basis which constitutionally can stand.

Certainly, it cannot be justified on the basis of not splitting county lines, because if Orlando had been left alone in that district, no county lines would have been split.

In addition, the plan provides precedents and grandfather requirements which we believe are discriminatory and which cannot be upheld. For example, certain senators [fol. 89] are grandfathered in while other similarly situated, who are running from the same district they previously ran from, are not grandfathered in. We think neither the Senate nor the House plan meets the Attorney Gen-

eral's guidelines twice laid down by the Legislature and, more important, do not meet the tests laid down by this Court in its Opinion of December 23rd and by the Supreme Court of the United States in its decision.

The Florida Legislature has clearly not absorbed the basic premise laid down by the United States Supreme Court in Reynolds vs. Sims, and I quote:

"Citizens, not history or economic interests cast votes."

And further in the Opinion:

"A legislator represents people, not trees or acres."

We have today filed with the Clerk a set of suggested corrections in this legislative plan in which we show, without splitting any counties, that, in fact, deviations can be reduced from 15.1 in the Senate to 10.6 and in the House plan, from 18.3 to 11 per cent, and still not change the legislative plan basically.

[fol. 90] The Court also has before it the plan filed by the plaintiff in Dade County at the Court's request in which no county is split; all districts are contiguous, and the maximum deviation is less than 3.5 per cent. I think this plan shows how much better job the legislature could have done if it had any mind to comply with the Attorney General's guidelines or with the Court's tests laid down in its December 23rd opinion.

In closing, I would like to make one final recommendation to the Court, and that is that, irrespective of what the Court may decide to do, we would recommend that the period for qualification of candidates should be immediately extended to a period one week after the date of the Court's decision on the respective plans now pending before it.

Thank you.

Judge Jones: The Attorney General is number one in the order of appearances in the record here of the defendants. The Court does not have any particular preference

as to it, as to who shall follow whom. I take it that the Attorney General is asking for a complete affirmance from top to bottom of the legislative apportionment.

[fol. 91] If the supervisors defendants want to urge changes, perhaps they should proceed ahead of the Attorney General. If not, we will let the Attorney General go ahead. We do not know what your position is.

STATEMENT BY MR. BRITTON

Mr. Britton: Thank you, your Honor. I will attempt to make it clear.

The Supervisor of Registration for Dade County under the instructions of the Board of County Commissioners of Dade County, whom I also represent, are here to urge the Court to place into effect the plan that these defendants filed jointly with the plaintiff before you four months ago.

It was this month four years ago, your Honors, that this suit was commenced before you by Judge Swann who is here with us today. The sole task of the Court, as I understand it today, is to carry into effect the mandate of our highest Court. It is my understanding from the pleadings that there are three proposals urged to you today, one of which I would urge specifically.

Of those three, it is our understanding as your Honor expressed it, that the Attorney General will once again urge you to allow the Legislature's proposal, the eighth, [fol. 92] to go into effect. Mr. Paul has presented to you in capsule form the analysis that we filed with you in the pleadings and I will not repeat that, other than to make this comment: that the maximum spread between that county or those citizens in your state that are less adequately represented and most abundantly represented in the Senate, under the plan that the Attorney General would have you approve, is 25 per cent. The spread in the House is 33 per cent. So, under this plan, certain citizens of Florida would have a disproportionate voting ratio of four to three in the Senate and three to two in the House.

Judge Jones: Dade County is not unhappy with its own situation?

Mr. Britton: Not in the slightest, your Honor. Under that program, in the House there is a disproportion of over five per cent which we think to be totally needless. But, certainly, not invidiously discriminatory under any decision of the Court.

Judge Jones: And Dade County is just motivated by higher moral principles in wanting everybody else in the state to be as well treated as it has been.

Mr. Britton: The interest is more selfish, your Honor, [fol. 93] than that. I know of no reason why a citizen of Polk County could not come in after this Court adopts the legislature's plan and attack it in another Court proceeding. If it did, this case which had its beginning four years ago, would be prolonged perhaps for another year needlessly.

Apart from that selfish interest that I feel as a citizen here and I believe my fellow citizens feel, I do feel that it is our responsibility before you to urge the correct, the sound, the proper legal solution to you regardless of which way it affects us.

Judge Jones: Well, do not misunderstand me. I was not critical. I just want to get your position clear.

Mr. Britton: I did not interpret your Honor's remarks as critical.

The legislature's plan, it seems to me, has but one virtue, and that is the virtue that it meets the approval of the legislature. That virtue, as I understand it, stems from the premise that the legislature in some way reflects the desires, the will of 5 million people who are Floridians. That premise I would suggest to your Honor is totally [fol. 94] unsound in this instance. It is a conclusion that we have all arrived at, that this legislature was selected through a process which this Court has labeled invidiously discriminatory.

This legislature is a lame duck legislature, and the only virtue of its plan is that it was politically expedient to these lame ducks.

This same legislature, or one very nearly similarly constituted in 1962, proposed a legislative plan which accepted the approbation of all of our legislative leaders and guiders in the state and most of our representatives of the press. That legislative plan was placed before our people and was rejected by them by a vote of four to three. Two years later a very similarly constituted legislature conceived a second plan, a plan which again was placed before our people and that plan was rejected by a vote of two to one.

I would suggest to you that the premise that the legislature's plan is some special seal of acceptability or some special relationship to the aspirations and desires and wishes of our citizens is an unsound premise. If it is an unsound premise, then there is no justification for seeking [fol. 95] to modify that which must be held invalid into a plan which might achieve validity.

We have joined with the plaintiff in submitting before you the modified plan which he has suggested, because we believe it is our duty to suggest to you those changes that could be made in the plan which could not possibly, we believe, be upheld into a plan which could conceivably be upheld. That plan has the virtue of bringing the tolerance between over-representation and under-representation down to 20 per cent, or a ratio of, say, three to four.

The plan which we believe the Court must accept is the plan that the plaintiff has submitted to the Court. I say "must accept," because I believe that this Court's distillation of the law as it stands today in our country was precisely accurate. This Court said three months ago that precise exactness cannot, of course, be achieved, but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided.

The rest of this statement that I would read again to you was repeated to you by Mr. Paul and I will not belabor [fol. 96] you with your own announcement, other than to point out that of the three alternatives that are advocated

before the Court today—and I am aware of none others in the pleadings before you—that approaches, anywhere near the precision or equality of representation advanced by the plaintiff's plan.

The principle that 15 per cent tolerance or deviation might be accepted was specifically rejected by this Court and correctly so, when the Court noted that only those deviations which cannot be avoided may be accepted.

We have placed before you a plan which eliminates these departures entirely. There is no justification for this Court accepting anything less than that plan which proposes the most equal representation. It is for that reason, your Honors, that we urge that this Court adopt that plan submitted by the plaintiff and joined in by this defendant.

Thank you.

Judge Dyer: We have had some suggested plans filed by intervenors whom we have treated amicus curiae and they are not permitted to argue, which suggest that it [fol. 97] would be less discriminatory to sub-district Dade County and also do something with the large second district in the middle northeastern part of the state. Would you have a feeling about that?

Mr. Britton: Your Honor, I would like to comment on that, if I may.

The concept of separate districts for each representative has a noble history and a worthy objective, and I would be the last to oppose it on principle. I oppose it here for two reasons: In the first place, I am aware of no basis on which any human being today in this state can divide this state up into separate entities, whether it be those entities prescribed by our Article VII, Section 2 of our Constitution, fixing the limits of the legislature, or whether it would be that suggested by the State Legislature last week. I know of no way in which the state can be parceled up in these divisions where any man can truthfully tell himself afterwards he has compartmentalized the state in areas of equal population. And the reason for that is that our census today which is our only accurate record of popu-

lation and which is now six years old, does not have that degree of precision within it.

[fol. 98] I am aware that the legislature in attempting to reapportion the state for congressional districts did attempt this task through the device of using registered voters within precincts. The fallacy there is that it is based on a premise which no man can vouch for. It is based on the premise that within any given area some 41 point something per cent of the population is registered voters. That premise, I think, our common sense tell us, is an illusionary one, at the very best. There is no verification of that premise at all, unless you take the state as a whole, as an entity, or the county as a unit as an entity.

If you attempt to parcel off as sub-districts in the southeastern part of Dade County—and may I remind you that Dade County is a county which is larger in area than five states in our Union—if you should attempt to take this large geographical area and divide it up into compartments based on this premise, without any verification, I think this Court would have side-stepped the requirement that population be the criteria for apportioning the state.

The second reason that I would urge is this: In our [fol. 99] state's political history I know of no instance where an effort has been made to compartmentalize the state into units for representation smaller than or dividing and splitting and crossing over the traditional county boundaries. This state of ours has a great many counties unlike some. This state has grown up in the pattern of these county units being treated as political entities within the state, subdivisions of the state. So, for a second reason, I believe that at this time it would be impractical and unsound, and I believe unjust, to attempt to compartmentalize the state in that fashion.

Now, responding to your Honor's second question, if I followed it, which was, do we have a comment on the proposal to further fraction those multi-county districts. This was advanced by Senator Matthews in a brief filed before

the Court the other day. We have attempted to do that in the modification plan submitted to you.

The problem that we encounter is, and the problem, I am certain, that the legislature encountered, is that an attempt to divide areas made up of a great many small counties with populations which run from two to six thou-
[fol. 100] sand, in order to achieve representation, presents us with the alternative choice of giving disproportionate representation to some parties. That is the practical problem.

The final remark that I will make, at the risk of imposing on your Honor's question, is this: As I understand the rulings of our higher Court, when there is a clash as their inevitably must be between the principle that it is desirable to have one representative for one group of people and the principle that every citizen must have an equal voice in the selection of representatives, when there is a clash between those two desirable objectives, only one is guaranteed by our constitution, and that is the second: the one that guarantees equal representation.

When there is such a clash, then the only other desirable objective must yield to it, for only one is assured us and promised us by our constitution.

This is the reading that I make of the decision as recent as the recent District Court decision in South Dakota.

Thank you.

[fol. 101] STATEMENT BY MR. COWART

Mr. Cowart: May it please the Court, the position the Attorney General takes in relation to the plan that has been submitted before the Court for consideration is, of course, in the number one instance, it is a plan of the legislature; that it is a plan of the representatives of the people of the State of Florida that is adopted by the legislature which has been labeled to be an invidiously discriminatory legislature, but which meets the problem as a result of the decision in Swann versus Adams in the United States Su-

preme Court. And we think that was arrived at in a commendable way.

The legislature had before it and was comprised, as this Court has ruled, in a manner that has not complied with the constitutional standards of Reynolds vs. Sims. Notwithstanding that, with an approach toward an attempt to compute and set before us a plan of legislative apportionment which was valid which met constitutional standards, House Bill 17-X was adopted.

In pointing out the plan, we want to say first to the Court that the guidelines that we have recognized and the guide lines that we have advised the legislature on have [fol. 102] been to the point that mathematical certainty in and of itself is not a rigid formula; that certain departures are available from certain mathematical decisions which they must not depart from and which could be invidiously discriminatory of the standards set by the Supreme Court of the United States; notwithstanding their declaration in Reynolds vs. Sims that they were leaving this matter largely within the judgment of the District Court.

For on the same day of the decision of Reynolds versus Sims, the decision of Lucas versus Colorado was decided and the Court alluded to the position in Lucas, that a 1.7 variance, the maximum population variance ration in the Senate of Colorado, has at least arguably inferentially met the test.

Judge Dyer: Actually, they did not say that. Didn't they just say that they did not have to look into that?

Mr. Cowart: I think, sir, the language was, as I recall it, that 1.7 inferentially met the standards. They said "inferentially." I would like to point out to the Court that the 1.7 variation used in the maximum population ration standards gives us an equation of a 26. variance on devia- [fol. 103] tion rather on top than bottom to arrive at 1.7 on percentages.

The plan as adopted by the legislature of Florida, its largest variance is 1.41 in the House. When we look at the 1.41 figure measured against the standards of Lucas, if we

call it a standard, we find that we comply. But more significant, and we think extremely commendable as far as the legislative mathematics were concerned, is that 50.43 per cent of the people of Florida will elect 50.43 per cent of the House of Representatives of the State of Florida.

I fail to see how we can come any closer to mathematical precision than that equation. When it is turned over to the Senate, we find that 48.61 per cent of the population of the people of Florida will elect 50 per cent of the Senate. We fail to see that there has been any invidious discrimination against the most populous areas for the most populous areas will compile the percentages to the left side of our equation, to-wit, the per cent of our population that elects the largest percentage of the legislature.

In further analysis of the plan, we find that 88 seats in the house—now, those are individual seats, not districts [fol. 104] —do not exceed 10 per cent. In the House, 29 seats do exceed 10 per cent, but only seven exceed 15 per cent. And in the Senate, 36 seats do not exceed 10 per cent with only 12 exceeding 10 per cent and only one exceeding five per cent. And that, of course, is a 15.09 figure.

It, first of all, is an expression by the people of Florida and the Attorney General puts great significance on this fact, for the legislature, in considering the plan offered as representative of the people. And although we are not hesitant to say that they have not met this test before as has been decreed by this Court and by the United States Supreme Court, we feel that in this instance they have. That the plan itself does not contain any fragment which, considered as a whole, amounts to that which is invidiously discriminatory.

Now, it is said that we do this because we go to a multi-county, a multi-member and single-member district in some instances.

We respectfully submit to this Court that all of these fragments of unconstitutionality, if you might speak of them as such, shall have been met by the Supreme Court

and been ruled upon. I need only say that multi-member [fol. 105] districts have been the subject matter of a number of reapportionment cases. And I think one of the most recent enunciations on this has been the aspect of the Arkansas case which says in and of themselves, they do not constitute that which is invidiously discriminatory.

As far as the residence requirements that are posed and put into the plan, we respectfully submit that this also has been the subject matter of the Federal Court's attack. For the very criteria used in Davis versus Mann, the very case that we allude to in our motion, was the fact that one of the counties would never be able to elect a member to sit in the House of Virginia for the simple reason that the more populous areas outvoted it.

I think it is commendable to stand before this Court and say that our legislature recognized this fact in attempting to equal the position argued and well taken by it in Davis versus Mann that they have inserted these requirements in certain areas.

The one in the senatorial district in and of itself is not completely a residence requirement. In a sense that has been argued before. They merely place and try to procure [fol. 106] representation for Monroe County to our immediate south. In an attempt to arrive at this, 103,000 was used as a maximum population allowance. And they came into Dade County for the basis of compiling population statistics based upon voter precincts and have only said this: that a senator must reside in the 42 senatorial districts, but that he will be elected at large in Dade and Monroe Counties.

Again, we feel an attempt to try to comply with the argument that was set forth in Davis versus Mann, that the more populous area will always control the election and that the less populous area can never get representation.

As far as the grandfather clauses and positions themselves, there is no grandfathering in these bills except in those senatorial districts where their constituencies have remained identical.

It is true that some of these senators were not grandfathered in and we respectfully submit that this was by choice of individual senators and it does not and should not, we feel, lessen the position that it is in and of itself not invidiously discriminatory. For there were odd numbered senators who were elected by the people in their dis-
[fol. 107] tricts, in their particular districts, to serve a four-year term and they are only completing those particular terms in those districts where the individual senator's constituency has not changed.

We respectfully submit to this Court that the legislature of the State of Florida under the mandate of Swann versus Adams in the instant case has produced for this Court a plan that we contend is more than argued permissible. For when you consider that the greatest variance that is in the plan is in the House and that 50.43 of the people of the State of Florida will elect 50.43 per cent of the House of Representatives, we feel that even the closest mathematical equation is met here.

We cannot say that if the 15 per cent rule is construed as a hard and fast rule that it meets the test. However, we say that the 15 per cent rule is not a hard and fast rule, but that as we set forth in our guidelines that had been eliminated here today and that a plan of above 15 per cent would be difficult to defend.

We feel that since the legislature in this instance has departed from it in three instances only, and it is not and of
[fol. 108] itself invidiously discriminatory when we look at what the populous will elect that we can defend this position without any inconsistency in the position we have taken.

Judge Jones: What is the defense?

Mr. Cowart: Sir?

Judge Jones: What is the defense of exceeding the 15 per cent?

Mr. Cowart: The legislature had before it, or attempted to comply in this instance, we think, with constitutional standards in the State of Florida in not changing any

county unit. The political subdivisions that have been pointed out have remained intact. The congressional districting was used as a criteria to arrive at the differential. And it is the manipulation of the counties by population within these districts as to why the deviations are present.

And we respectfully submit that the defense lies in the fact that they have not gone into a more populous senatorial aspect as might have been done, but left it as county units, the individual units which are contained within these variations.

We feel further that the defense is that in and of itself, [fol. 109] it is not invidiously discriminatory.

Judges Jones: It is unless explained, isn't it?

Mr. Cowart: Yes, sir.

Judge Jones: What is the explanation of the congressional district lines?

Mr. Cowart: This is a portion of the explanation. It is a confinement within that district. And further, the explanation that the county lines have not been cut. And further, that in apportioning this entire legislature, looking at the state as a whole, the particular house involved has arrived at the absolute mathematical certainty of population as opposed to the makeup of the House.

In staying in the numbers that they have allocated to this plan and in staying within the divisions of these numbers, they have arrived at the absolute mathematical certainty to which we have alluded before.

Judge Jones: You could have 51 per cent of the representation elected by 48 per cent of the people and still not give Manatee County any voice at all, couldn't you?

[fol. 110] Mr. Cowart: Yes, sir, you could, but I feel that would be invidiously discriminatory to the people of Manatee County. It would be, I think, a departure completely from all of the standards that we have seen mirrored.

I would only point further to the Court that in just last week, or the last week of February, the Supreme Court

approved the plan of Wyoming where the Three Judge Federal Court in the District of Wyoming apportioned the senate of that particular state. And the maximum population ratio there was 2.08 to one.

We have come nowhere near this particular standard, for our highest standard is 1.41, and when we mirror the Senate plan to 1.35, which would be a 15 per cent variation, we find that we fall below that 15 per cent also.

Judge Jones: Is there anything further, Mr. Paul?

FURTHER STATEMENT BY MR. PAUL

Mr. Paul: There is, your Honor, yes. May it please the Court, I am interested in the Attorney General's argument of the so-called fragment of unconstitutionality as he admits exists in this Bill.

[fol. 111] I do not think that variances as great as we have outlined in our analysis can be considered to be fragments of unconstitutionality. I think the Attorney General overlooks some very significant language in the Lucas decision on which he relies in reference to that very point. And I quote from the decision, at page 735:

"On the other hand, disparity from population based upon representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of the state legislature and may, therefore, render the apportionment scheme at least constitutionally suspect."

I think that is exactly the pattern that we find here. As I pointed out in the Senate of the eleven over-represented districts, seven consist of small rural counties and of the six under-represented districts, five are the populous counties.

In the House, eleven of the 17 over-represented districts are small counties and Polk County leads the list of unrepresented districts.

I think it is the cumulative effect, both of the size of [fol. 112] the disparity and of the number of disparities

in both of the plans that make both the House and the Senate plans invidiously discriminatory.

The Attorney General has referred to the recent Supreme Court plan which is a one-line opinion, just saying that the decision is affirmed. But I ran that case in the Law Week and the question presented to the Court was "Could the plan be approved where all of the variances in both plans were less than 15 per cent?" That was the question presented to the United States Supreme Court.

Judge Dyer: Is that the Colorado case?

Mr. Paul: No, sir, that is the Wyoming case, Harrison versus Schaefer. I don't have the name of the—

Judge Dyer: Would that be Crawford versus Faubus?

Mr. Paul: That is correct. That was the question presented in that case. I think the Chief Judge has asked a very significant question, and that is, really, what is the explanation of these districts. I do not think that the [fol. 113] Attorney General can rely on congressional districts. This is particularly true in the House plan. Congressional districts were not followed in the House plan. We only have to look at Orange County and its grouping with Osceola to see that the county lines could not have been followed. The congressional districts, incidentally, are on appeal themselves under challenge of being invidiously discriminatory.

The Senate plan does not completely follow the congressional districts, and, in fact, the Attorney General's map exhibit attached to the motion filed this morning is inaccurate. It shows Dade County under the Senate plan split into three pieces, which is the case under the congressional plan district, but not the case under the plan adopted by the legislature.

Judge Jones: Is there anything further, Mr. Britton?

FURTHER STATEMENT BY MR. BRITTON

Mr. Britton: Your Honor, if I understood the Attorney General, he referred not to the Arkansas case which Mr. Paul correctly related to the Court, but, rather, to the Wyoming case.

If I understood him correctly, I should like to mention the Wyoming case. The United States Supreme Court [fol. 114] Reporter indicates that only one question was presented to the United States Supreme Court, and that was not whether or not the population deviation was disproportionate or not, but whether or not a multiple member district could be acceptable. It was held that it was.

In the Arkansas case, Mr. Paul did refer to it. It was noted that nowhere did the deviation exceed 15 per cent. That is our understanding of those two most recent decisions.

Judge Jones: The Court as well as counsel are aware of the desirability of an early doing of whatever we are to do. Is it felt that the Court would be helped by further briefs? No one volunteering a reply to that question, we assume that no further brief would be helpful, and the Court will take it on submission under the record as it has been made, the papers that have been filed and the arguments that have been made.

The Court will stand in recess.

[fol. 116] CLERK'S CERTIFICATE (omitted in printing).

[fol. 117]

SUPREME COURT OF THE UNITED STATES

No. 136—October Term, 1966

RICHARD H. M. SWANN, et al., Appellants,

v.

TOM ADAMS, Secretary of State of Florida, et al.

Appeal from the United States District Court for the Southern District of Florida.

ORDER NOTING PROBABLE JURISDICTION—
October 10, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 16 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~1314~~ 136
1966

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

JURISDICTIONAL STATEMENT

THOMAS C. BRITTON
1626 Dade County Courthouse
Miami, Florida 33130

STUART SIMON
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant
Supervisor of Elections of Dade
County, Florida

D. P. S. PAUL
1314 First National Bank Building
Miami, Florida, 33131

P. D. THOMSON
1314 First National Bank Building
Miami, Florida, 33131

NEAL RUTLEDGE
111 N. E. First Street
Miami, Florida, 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida

Attorneys for Appellant
Richard H. M. Swann

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IN THE

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No. _____

RICHARD H. M. SWANN
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Appellants,

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E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

JURISDICTIONAL STATEMENT

This is an appeal—the third addressed by the same Appellants to the Supreme Court of the United States in this cause—taken by Appellants Richard H. M. Swann and the Supervisor of Elections of Dade County, Florida, from an order of the United States District Court for the Southern District of Florida entered on March 18, 1966. The District Court held that a legislative apportionment plan enacted by the Legislature of the State of Florida on

March 9, 1966, after this Court's decision earlier this term, met the requirements of the Federal Constitution in all respects, did not deny Appellant Swann or other citizens of Florida due process of law or equal protection of the law as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States, and therefore refused to enjoin the application of such legislative enactment. This statement is submitted to show that the Supreme Court has jurisdiction of this appeal, that the District Court failed to follow either of the prior judgments of the Supreme Court in this cause (*Swann v. Adams*, 378 U.S. 553; *Swann v. Adams*, 34 U. S. Law Week 3291 (February 25, 1966)), and that substantial questions are presented by this appeal.

OPINIONS BELOW

The opinion and order appealed from, which were entered on March 18, 1966 by the United States District Court for the Southern District of Florida, are unreported. They are printed herein as Appendix B-1. Earlier opinions in this cause are reported as:

(i) *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla., 1962)

(ii) *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla., 1963)

(iii) *Swann v. Adams*, 378 U.S. 553. This opinion is printed herein as Appendix B-2.

(iv) *Swann v. Adams*, unreported (S.D. Fla., December 23, 1965); printed herein as Appendix B-3 with appendix thereto deleted.

(v) *Swann v. Adams*, 34 U.S. Law Week 3291, decided February 25, 1966; printed herein as Appendix B-4.

JURISDICTION

Following the reversal of the District Court's opinion and order of December 23, 1965 by this Court on February 25, 1966, the Legislature of Florida was convened in Special Session by the Governor on March 2, 1966. The Legislature so convened was based on the 1963 apportionment, held unconstitutional by this Court almost two years previously. *Swann v. Adams*, 378 U.S. 553. On March 9, 1966 this Legislature enacted HB 17-X(66) reapportioning both houses of the state legislature. The Appellants immediately attacked this plan as failing to meet the rule of *Reynolds v. Sims*, 377 U.S. 533, twice before applied to Florida by this Court (*Swann v. Adams*, 378 U.S. 553; *Swann v. Adams*, 34 U.S. Law Week 3291), and sought to enjoin its implementation under authority of the provisions of Title 42, U.S.C., Sections 1983 and 1988 and Title 28, U.S.C., Section 1343. This appeal is from an opinion and order of the District Court entered on March 18, 1966 at 9:38 A.M. which held that the legislative apportionment met the requirements of due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment of the Federal Constitution in all respects, and which refused to enjoin its use in state pri-

maries scheduled to take place in May, 1966. Notice of Appeal by the Supervisor of Elections of Dade County, Florida, was filed with the Clerk of the United States District Court for the Southern District of Florida on March 25, 1966, and Appellant Swann joined in the appeal on the same day through a separate Notice of Appeal.

The jurisdiction of the Supreme Court to review the opinion and order of the District Court by direct appeal is conferred by Title 28, U.S.C., Section 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the opinion and order herein appealed from: *Baker v. Carr*, 369 U.S. 186; *Reynolds v. Sims*, 377 U.S. 553; *Swann v. Adams*, 378 U.S. 553; and *Swann v. Adams*, 34 U.S. Law Week 3291.

STATUTES INVOLVED

The constitutionality of HB 17-X(66), Chapter 66-1, Laws of Florida, as enacted by the Legislature of the State of Florida on March 9, 1966 and approved by the Governor of Florida on March 10, 1966, is involved. This enactment is printed herein as Appendix A-1.

QUESTIONS PRESENTED

1. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which certain counties are over-represented to the extent of 18.28 percent and certain other counties are under-represented to the extent of 15.27 percent in the House of Representatives,

deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

2. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which certain counties are over-represented to the extent of 15.09 percent and certain other counties are under-represented to the extent of 10.56 percent in the Senate, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

3. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which there are deviations from mathematical equality in excess of 15 percent in 7 of the 117 House of Representative Districts, and in which there are deviations from mathematical equality in excess of 10 percent in 29 of the 117 House of Representative Districts, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

4. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which there are deviations from mathematical equality in excess of 14 percent in 6 of the 48 Senatorial Districts, and in which there are deviations from mathematical equality in excess of 10 percent in 12 of the 48 Senatorial Districts, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

5. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which there is a clear pattern of under-representation for the populous urban counties and over-representation for the sparsely settled rural counties in both legislative houses, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

6. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 and containing the features described in the foregoing questions deny to Appellant Swann, persons represented by Appellant Supervisor,

and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, when the District Court also had before it for consideration an apportionment plan jointly submitted by Appellant Swann and Appellant Supervisor at the invitation of the Court in which there was a maximum deviation from mathematical equality of only 1.95 percent in the House of Representatives and a maximum deviation from mathematical equality of only 3.35 percent in the Senate, and in which all electoral districts were geographically contiguous?

7. Does the refusal of the District Court to declare unconstitutional, arbitrary and unreasonable the reapportionment plan contained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 and containing the features described in the foregoing questions deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, when the Court also had before it for consideration an apportionment plan jointly submitted by Appellant Swann and Appellant Supervisor which, through minor modifications and adjustments to the plan contained in HB 17-X(66), reduced the maximum deviations from mathematical equality from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives?

8. Does the refusal of the District Court to declare unconstitutional and enjoin the reapportionment plan con-

tained in HB 17-X(66) enacted by the Legislature of the State of Florida on March 9, 1966 in which three Senators are "grandfathered" or held over from the previous Senate while other Senators are not so "grandfathered" or held over, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

9. Did the District Court err in according a greater presumption of validity to the plan enacted by the Legislature in HB 17-X(66) than to the alternative plans submitted by Appellant Swann and Appellant Supervisor when the plan contained in HB 17-X(66) was enacted on March 9, 1966 by a malapportioned Legislature (still composed of representatives elected under statutes enacted in 1963 and declared unconstitutional by this Court on June 22, 1964) on the eighth occasion on which a malapportioned and unconstitutional Legislature had been convened since this litigation was commenced on March 28, 1962?

STATEMENT OF THE CASE

The antecedent history of the cause is set forth in this Court's decision of February 25, 1966. *Swann v. Adams*, 34 U.S. Law Week 3291. The Governor of Florida issued a call on February 26, 1966 convening a Special Session of the State Legislature on March 2, 1966 to consider reapportionment legislation. The Legislature so called to convene was composed in the manner found unconstitutional by this Court almost two years previously.

Swann v. Adams, 378 U.S. 553. On February 28, 1966 the Appellants filed a joint petition asking the District Court to adopt and put into immediate effect a reapportionment plan prepared by Appellants and previously filed on July 6, 1965 at the District Court's express invitation. This plan was in accord with the size requirements contained in Section 2, Article VII of the Constitution of Florida which states:

> "The Legislature shall consist of not more than 32 members of the Senate and of not more than 68 members of the House of Representatives."[1]

The 32 Senator, 68 Representative plan urged by the Appellants divided the State into 12 Senatorial districts or constituencies and 14 Representative districts or constituencies. Each district created was composed of a single county or a group of contiguous counties. No county was subdivided under the plan, and it met the size limitations imposed by the above quoted section of the Florida Constitution. The plan incorporated almost perfect voter equality with no Senate constituency deviating by more than 3.35 percent from absolute mathematical equality and no House constituency deviating by more than 1.95 percent. In the alternative, the joint petition asked the Court to decree that each member of the Florida Legislature called to convene in Special Session on March 2, 1966, be given a vote weighted in proportion to the number of people in the area from which he was elected, as shown in

[1] The above quoted section of the Florida Constitution has never been repealed. It was superseded by a later enacted section which the Supreme Court of Florida declared unconstitutional in an Advisory Opinion to the Governor appearing at 150 So. 2d 721 (1963) because of the district court's opinion in Sobel v. Adams, 208 F. Supp. 316 (S. D. Fla. 1962).

the 1960 decennial census, in order to compensate for the invalid composition of the Legislature.

On March 1, 1966, the District Court deferred any hearing on the joint petition of the Appellants on the ground that it was without jurisdiction until it received the mandate or judgment based on the Supreme Court's opinion of February 25, 1966.

On March 2, 1966, the Special Session of the Legislature commenced. This session represented the eighth time that an unconstitutionally apportioned legislature had met since this cause was instituted in March, 1962. Just before the Special Session began, the Attorney General of the State of Florida furnished each member of the Legislature with a document entitled "Criteria and Guidelines for Reapportionment as Established by Federal Courts." Therein he stated inter alia:

> "The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15 percent would be difficult to sustain as complying with 'one man-one vote.' It is therefore respectfully submitted that a percentage variation not exceed 15 percent."

On March 9, 1966, the Legislature enacted HB 17-X (66), Chapter 66-1, Laws of Florida. This statute, as approved by the Governor on March 10, 1966, is printed herein as Appendix A-1. Salient features of this enactment are the following:

(a) It provides for a Senate of 48 members, and a House of Representatives of 117 members.

(b) In the House of Representatives certain counties are over-represented to the extent of 18.28 percent while other counties are under-represented to the extent of 15.27 percent, a spread of 33.55 percent. There are deviations from mathematical equality in excess of 15 percent in seven of the House constituencies, and in excess of 10 percent in 29 of the House constituencies.

(c) In the Senate certain counties are over-represented to the extent of 15.09 percent while other counties are under-represented to the extent of 10.56 percent, a spread of 25.65 percent. There are deviations from mathematical equality in excess of 14 percent in six of the 48 Senatorial Districts, and in excess of 10 percent in 12 of the 48 Districts. Further, three Senators from unchanged Senatorial Districts are "grandfathered" or held over from the previous Senate, while other Senators similarly situated are not "grandfathered" or held over.

(d) There is a pattern of under-representation for the populous urban counties and over-representation for the more sparsely settled rural counties in both legislative houses.

On March 14, 1966, the Attorney General of the State of Florida moved the District Court to approve HB 17-X (66). On March 15, 1966, the Appellants submitted to the District Court a statistical analysis of HB 17-X(66) pointing out the extent of its departures from mathematical equality, and simultaneously a document entitled "Suggested Modifications to the Plan of Apportionment Contained in HB 17-X(66)." This document showed how the maximum deviations from equality could be reduced from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives by minor modifications and adjustments not affecting the overall structure of the apportionment plan adopted by the Legislature.

Oral argument was heard on March 15, 1966. The Attorney General urged the Court to sanction the apportionment plan contained in HB 17-X(66), while counsel for Appellants sought adoption of the joint plan calling for 32 Senators and 68 Representatives originally submitted to the Court on July 6, 1965, or in the alternative, adoption of the suggested minor modifications to HB 17-X(66).

On March 18, 1966, the District Court entered its opinion and order declaring HB 17-X(66) constitutional in all respects and refusing to enjoin its application. It is this Order that the Appellants respectfully ask the Supreme Court to review and reverse.

THE QUESTIONS ARE SUBSTANTIAL

1. On June 15, 1964, this Court in the Reapportionment Cases, 377 U.S. 533-765, established a standard for

apportioning both houses of a bicameral state legislature, in the following terms:

> ". . . we necessarily hold that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis."
> *(Reynolds v. Simms*, 377 U.S. 533, 576*)*

> "Overweighting and over-valuation of the votes of those living here has the certain effect of dilution and under-valuation of those living there."
> *(Reynolds v. Simms*, 377 U.S. 533, 563*)*

> ". . . the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."
> *(Reynolds v. Simms*, 377 U.S. 533, 579*)*

> ". . . the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."
> *(Roman v. Sincock*, 377 U.S. 695, 710*)*

Since that date the federal district courts have been charged with the responsibility of enforcing this standard of democratic equality, and this Court has not again

spoken. But during this period the district courts have, perhaps unwittingly, subverted this standard of maximum voter equality into a different standard, the standard of "maximum permissible deviation", a standard that has come to mean an allowable deviation of up to 15 percent. This figure was originally mentioned in *Toombs v. Fortson*, 241 F.Supp. 65 (1965) when the District Court said:

> "We decline to set a mathematical formula to be followed but we do hold that a variance of more than 15 percent would be difficult, if not impossible, to justify. It may be that there will be some later elucidation by the Supreme Court on this complex question but until such event occurs, we will base any test as to the reasonableness of variances on the departure figure of 15 percent." (Page 70)

This standard was again enunciated in *Crawford County Bar Association v. Faubus*, 238 F.Supp. 290, affirmed without opinion by this Court at 34 Law Week 3289. Compare too *Yancey v. Faubus*, ——F.Supp.——, affirmed without opinion ——U.S.——, wherein the District Court stated:

> ". . . the authorities do suggest that a deviation of *not more than* 15 percent either way is tolerable." (Emphasis supplied) See Note, 79 Harv. L. Rev. 1226, 1250.

The creation of this "maximum permissible deviation" was most unfortunate, for immediately the assumption arose among legislators (and district courts) that any deviation not in excess of 15 percent was constitu-

tionally acceptable. As an example of this, see the statement of the Attorney General of Florida to the Florida Legislature, *supra*, page 10. A penumbra of acceptability with only a temporarily defined outer limit has been created. The temporarily defined outer limit may possibly be extended and, if the 15 per cent deviation proves generally acceptable to the courts, perhaps an 18 percent deviation may also be sanctioned. The District Court sanctioned an 18 per cent deviation in this case.

The principle created by this Court is clear: One man, one vote, mathematical equality. Certain other factors are relevant, however, such as respect for county lines, contiguity of districts, and state constitutional standards as to the size of legislative houses. It must be recognized that these relevant factors will create deviations from mathematical exactness, but only such minimal deviations as necessity requires should be tolerated.

A plan was presented to the District Court by the Appellants on July 6, 1965, satisfying all relevant non-population considerations and deviating from perfect equality by only 3.35 percent in one house and 1.95 percent in the other. This plan was before the Florida Legislature when it met in Special Session after this Court's decision of February 25, 1966. And this plan was again before the District Court when it issued its decision of March 18, 1966, herein appealed from. But the District Court rejected this plan and approved as constitutional in all respects a plan with deviations extending even beyond the *Toombs v. Fortson* "maximum permissible deviation" of 15 percent.

This appeal presents to the Court a unique opportunity to make clear that its *Reynolds v. Sims* standard

must be followed and that there is no maximum permissible deviation. When the District Court has before it a plan which satisfies all relevant nonpopulation considerations and deviates from perfect equality only minimally, it may not adopt a plan *with deviations 5 times as great* without a clear and precise explanation as to its reason for rejection of the former and acceptance of the latter. Without a statement of such reason, this Court is not even given the material which it requires to properly exercise its function of judicial review.

2. Appellants submit that, even if the rule providing for a maximum permissible deviation of 15 percent declared in *Toombs v. Fortson*, 241 F.Supp. 65 (1965) were to be approved by this Court, the reapportionment plan contained in HB 17-X(66) as enacted by the Florida Legislature on March 9, 1966, would still be unconstitutional as beyond the bounds of that rule.

One of the clearest and most forthright statements of the legal requirements of a constitutional apportionment plan is to be found in the opinion of the District Court of December 23, 1965 where, in holding the plan enacted by the Legislature in June of 1965 unconstitutional, the Court said in attempting to lay down valid criteria for the guidance of a future legislature:

> "In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that 'both houses of a state legislature must be apportioned on a population basis,' and that the 'state make an

honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable.' Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506. *Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided.* We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D.Ga.1965, 241 F.Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so." (Emphasis supplied)

An abyss lies between these unequivocal words of the District Court and its sanction of the legislature's plan of apportionment in which the maximum deviation in the House of Representatives exceeds 18 percent, the maximum deviation in the Senate exceeds 15 percent, and the number of deviations in excess of 10 percent exceeds 25 percent of the number of seats in each legislative house. The legislative plan fails to meet even the constitutionally dubious tenets of *Toombs v. Fortson*, 241 F.Supp.65 (1965).

Nor can it be argued that the departures from mathematical equality contained in the legislative enactment represented "only such minimal departures as necessity demands." These departures are neither minimal nor demanded by necessity. This is demonstrated by the joint plan of the Appellants in which there was a maximum deviation of only 3.35 percent in one house and 1.95 per-

cent in the other house. It was also demonstrated by the fact that Appellants were able to reduce the maximum deviations in the plan enacted from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives, with only slight adjustments and without affecting the basic structure of the plan.

3. In the legislative plan enacted on March 9, 1966 three Senators were "grandfathered" in or held over from the previous Senate.[2] These three Senators were from constituencies that were unchanged geographically from those existing in the previous apportionment plan. There were other Senators who were not "grandfathered" in, whose terms had not expired under the previous apportionment plan and whose constituencies remained geographically unchanged under the newly enacted plan. Retaining some Senators and not retaining others similarly situated is a violation of the equal protection of the laws clause of the Fourteenth Amendment. This difference in treatment was not part of a considered plan of staggered elections. It was ad hoc personal legislation. It denied to the voters of those Senatorial Districts whose Senators were "grandfathered" the right to elect possessed by all other Florida voters.

4. There is a pattern of under-representation for the populous urban counties and over-representation for the more sparsely settled rural counties in both legislative houses as constituted under HB 17-X(66). This is shown by basic facts that are not and cannot be disputed. Although the opinion of the District Court under review specifically held to the contrary, the Appellants respectfully

[2] These were the Senators from Orange, Palm Beach and Polk Counties.

submit that the District Court failed to take the following into account in reaching its erroneous conclusion:

(a) The only counties in the Senate under-represented by 10 percent or more are two large urban counties. These are Duval County which includes the city of Jacksonville, and Palm Beach County which includes the cities of West Palm Beach and Palm Beach. These two counties are by population the second and seventh largest in Florida, and together contain almost three-quarters of a million persons.

(b) In the House of Representatives, there are 13 members who are to be elected from constituencies under-represented by 10 percent or more. Of these 13, 10 will represent essentially urban areas. These include Orange County, which contains the city of Orlando, and Polk County, which contains the city of Lakeland. These two counties are by population the sixth and eighth largest in Florida, and have a combined population in excess of 450,000 persons.

(c) Urban Palm Beach County, with a population of over a quarter of a million persons, is seriously under-represented in both legislative houses. This County is under-represented by 10.6 percent in the Senate, as has been previously pointed out; in addition, the County will be under-represented by 7.8 percent in the House of Representatives.

See *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, in which the Court said:

> " . . . disparities from population-based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect."

(d) Of the 20 counties which are over-represented in the House of Representatives by 10 percent or more, 19 are rural in character[3] and only one, Brevard County which includes the Cape Kennedy complex and the surrounding cities and towns, is urban.

(e) There are three counties which are over-represented by 10 percent or more in both legislative houses. The three counties are Walton and Holmes Counties which are both over-represented by 15.1 percent in the Senate and 11 percent in the House, and Washington County, over-represented by 14.4 percent in the Senate and 11 percent in the House. All three of these counties are rural, with Walton County, having a population of just over 15,000 persons, being the largest of the three. See *Lucas v. Forty-Fourth General Assembly, supra.*

[3] These 19 counties are: Holmes, Walton, Washington, Jefferson, Dixie, Taylor, Levy, Gilchrist, Putnam, Alachua, Union, Bradford, Clay, Flagler, St. Johns, Lake, Seminole, Pasco, and Manatee.

(f) There are two rural counties heavily over-represented in the overall picture. Manatee County, an essentially rural county on Florida's west coast, is over-represented by 18.3 percent in the House of Representatives and 7.2 percent in the Senate. In addition, rural Gulf County, with a population of under 10,000, is over-represented by 14.4 percent in the Senate and 8.9 percent in the House of Representatives.

These instances manifest a pattern of discrimination against urban areas. The District Court's abrupt dismissal of the issue on the ground that HB 17-X(66) did "not discriminate *to any great extent* (Emphasis supplied) against any section of the state or against either rural or urban interests" was error.

ABUSE OF DISCRETION

The District Court obviously attached a presumption of validity to the plan enacted by the Legislature as HB 17-X(66). Only by resort to such a presumption can the District Court's rejection of both the joint plan submitted by Appellants and of the modifications alternatively suggested by Appellants to HB 17-X(66) be explained. Why else accept the Legislature's plan in totality despite the much closer adherence to the "one-man, one-vote" principle of the joint plan or proposed modifications submitted by Appellants? No other explanations or justifications for the wider deviations contained in HB 17-X(66) were offered to the District Court or stated by it.

Appellants respectfully submit that indulgence in such

a presumption in the circumstances of this case constituted an abuse of discretion. HB 17-X(66) was *not* adopted by a constitutional legislature; it was adopted by a Legislature illegally apportioned in accordance with a 1963 plan declared unconstitutional by this Court on June 22, 1964. *Swann v. Adams*, 378 U.S. 553. This Court may well consider whether a malapportioned legislature, meeting almost two years after the declaration of its unconstitutionality, could enact apportionment legislation entitled to any presumption of validity.[4]

But in the last analysis, it is not the source of the plan, but the merits of the plan itself, which must determine its constitutionality. In this case, the District Court had before it essentially three alternatives:

(1) A plan which afforded equality of voting rights to all voters in Florida within a maximum variation of only 3.35 percent;

(2) A plan which discriminated between such voters by as much as 18.3 percent and;

(3) A plan by which the deviations contained in HB 17-X(66) could be reduced from 18.3 percent to 11 percent without interference with its basic structure.

[4] The character of the Legislature which enacted HB 17-X(66) is illustrated by its enactment of legislation by a substantial majority, despite the opposition of virtually all urban representatives, permitting small rural counties to permanently freeze the present allocation of certain tax revenues among the counties by bonding them for many decades into the future. This was done despite the Legislature's being specially convened to deal solely with reapportionment. The Governor of Florida, chosen through an electoral process in which all voters have votes of equal weight, vetoed this enactment.

Appellants submit that the District Court abused its discretion when it approved the plan with the greatest deviation on the sole basis of a presumption of validity attaching to the product of a malapportioned, unconstitutional legislature making its eighth attempt. Deviations to the extent contained in HB 17-X (66) could be sustained, if ever, only on a clear showing of necessity derived from some special non-discriminatory, unavoidable circumstance. It should not be here sustained in mere deference to a legislature which in no sense represented the people of the State on a fair and equal basis.

CONCLUSION

For the reasons stated, this Court has jurisdiction of this action and should reverse the order below and order the District Court to reapportion the State of Florida in the manner advocated by the Appellants in their joint plan of July 6, 1965.

Respectfully submitted,

THOMAS C. BRITTON
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida 33130

STUART SIMON
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant,
Supervisor of Elections
of Dade County, Florida

D. P. S. PAUL

P. D. THOMSON
Paul & Sams
1314 First National Bank Building
Miami, Florida 33131

NEAL RUTLEDGE
Rutledge & Milledge
111 N. E. First Street
Miami, Florida 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida 33128

Attorneys for Appellant,
Richard H. M. Swann

APPENDICES

APPENDIX A-1

HB 17-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District — Escambia and Santa Rosa counties.

Second District — Escambia and Santa Rosa counties.

Third District — Okaloosa, Walton and Holmes counties.

Fourth District — Bay, Washington and Gulf counties.

Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District — Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District — Duval county.

Tenth District — Duval county.

Eleventh District — Pinellas county.

Twelfth District — Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District — Dade and Monroe counties.

Fourteenth District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District — Dade and Monroe counties.

Eighteenth District — Duval county.

Nineteenth District — Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District — Orange county.

Twenty-First District — Hillsborough county.

Twenty-Second District — Hillsborough county.

Twenty-Third District — Hillsborough county.

Twenty-Fourth District — Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District — Polk county.

Twenty-Seventh District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District — Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the secretary of state as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2

Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that

in the multi-county district of Lake and Seminole one representative shall be a resident of Lake County and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX B-1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-Civil-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in

population per representative and senator are too great. Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per*

curiam, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES
United States Circuit Judge

WILLIAM A. McRAE, JR.
United States District Judge

DAVID W. DYER
United States District Judge

APPENDIX B-2

SUPREME COURT OF THE UNITED STATES

SWANN v. ADAMS, et al.

Appeal from the United States District Court for the Southern District of Florida.

No. 297. Decided June 22, 1964.

PER CURIAM.

The judgment below is reversed. *Reynolds v. Sims*, __ U.S. __. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds v. Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds*.

Mr. Justice Clark would reverse on the ground stated in his opinion in *Reynolds v. Sims*, __ U.S. __.

Mr. Justice Stewart would remand for further proceedings consistent with the views expressed in his dissenting opinion in *Lucas v. Colorado General Assembly* and *WMCA, Inc. v. Lomenzo*, __ U.S. __.

Mr. Justice Harlan dissents for the reasons stated in his dissenting opinion in *Reynolds v. Sims*, __ U.S. __.

APPENDIX B-3

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,
Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,
Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of

the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein, It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034,

in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination.

It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisible to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under

the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Tombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX B-4

SUPREME COURT OF THE UNITED STATES

SWANN et al. v. ADAMS et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973. Decided February 25, 1966.

PER CURIAM.

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims* . . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART would affirm the judgment.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

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FILED
MAY 16 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~1965~~ 1316
~~1966~~

RICHARD H. M. SWANN, and
MARTIN BRATERMAN, Supervisor of Election,
Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

DAVID POPPER,
Attorney for Petitioners,
John A. Davis, Albert A. Hartman
and John J. O'Keeffe,
7520 Red Road
South Miami, Florida

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

RICHARD H. M. SWANN, and
MARTIN BRATERMAN, Supervisor of Election,
Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

COME NOW, JOHN A. DAVIS, ALBERT A. HARTMAN, and JOHN J. O'KEEFFE pursuant to Supreme Court Rule 42 (3) and respectfully move the Court for leave to file a Brief of Amicus Curiae in the above entitled cause and for such say:

1. That consent to file a brief of Amicus Curiae in this cause was refused your Petitioners by Appellants,

RICHARD H. M. SWANN, and MARTIN BRATERMAN, Supervisor of Election, Dade County, Florida, one of the Defendants below. Refusal to grant consent is further attested to by a sworn affidavit attached hereto and by reference made a part hereof as Exhibit "A".

2. The nature of the Petitioners interest in this appeal is as follows: JOHN A. DAVIS is a citizen and resident of Monroe County, Florida, and a member of the Republican Party and a registered voter. ALBERT A. HARTMAN is a citizen and a resident of Dade County, Florida, a member of the Republican Party and a registered voter. JOHN J. O'KEEFFE is a citizen and resident of Monroe County, Florida, a member of the Democratic Party and a registered voter. That House Bill 17-X as enacted by the Florida Legislature in March 1966, and approved by a three judge District Court in the United States District Court for the Southern District of Florida on March 18, 1966, deprives them of equal protection of the law as set forth and guaranteed them under the 14th Amendment to the United States Constitution.

It is further submitted that House Bill 17-X does not meet the requirements of this Court with respect to its rule of One Man — One Vote as set forth in the case of **Reynolds v. Sims** (1964) 377 US 533. In **Fortson v. Dorsey** 379 US 433 85 Supreme Court 498, this Court stated:

> "We treat the question as presented and our opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dic-

tates of the Equal Protection Clause. It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster..."

3. That JOHN A. DAVIS and ALBERT A. HARTMAN, as members of the Republican Party are being discriminated against and deprived of their rights as electors for the following reason. That predominant Republican voting areas will be disenfranchized from their choice of representation.

4. That JOHN J. O'KEEFFE, as a member of the Democratic Party and voter in one of the smaller counties, will have his voting powers effectively diluted.

5. That your Petitioners believe that the above facts and its serious deprivation of their constitutional rights under House Bill 17-X as passed by the Florida Legislature and approved by the lower court will not be presented at all by the Appellants or Appellees to this Court. Such fact is easily discernable by Appellants' adamant refusal to grant their consent to the filing of a brief in this Court as Amicus Curiae by your Petitioners. That upon information and belief Appellants and Appellees are for the most part members of another political party whose political interests are opposed to those of your Petitioners. They cannot be expected to

set forth either in their briefs or in oral argument facts or questions of law which would result in a loss to them of the political advantage said Appellants have attained by the unconstitutional reapportionment act passed by the Florida Legislature.

That the question the Petitioners seek to draw the Court's attention to was specifically reserved by this Court in its decision in the case of **Fortson v. Dorsey**, supra, for future determination when presented.

6. The facts or questions of law which will not be presented by the Appellants or the Appellees are:

(a) Will a political group be disenfranchized by House Bill 17-X?

(b) Will votes of residents of small counties be diluted so as to deprive them of the **One Man — One Vote** rule as set forth in **Reynolds v. Sims** (1964) 377 US 533?

WHEREFORE, Petitioners pray this Honorable Court to enter an Order granting leave for your Petitioners to file a brief of Amicus Curiae in the above entitled cause.

DAVID POPPER, Attorney
for Petitioners
7520 Red Road
South Miami, Florida

AFFIDAVIT

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority this day personally appeared STEWART D. ALLEN who, first being duly sworn deposes and says:

1. That he is a practicing attorney and counsellor at law duly licensed by the Supreme Court of the State of Florida; that he is one of the attorneys representing certain citizens and voters of Dade and Monroe County, Florida.

2. That on the 22nd day of March, 1966, said affiant requested of one, Daniel P. S. Paul, one of the attorneys for Appellant, Richard H. M. Swann, said Appellant's consent to the filing of a brief as Amicus Curiae by certain citizens and voters of Dade and Monroe County, Florida, in the case of Swann v. Adams, et al now pending on appeal in the United States Supreme Court. That consent to the filing of such a brief was refused by Daniel P. S. Paul.

3. That on the 29th day of March, 1966, one, Stuart Simon, Asst. County Attorney for Dade County, Florida, one of the attorneys for Appellant, Martin Braterman, Supervisor of Elections of Dade County, Florida, similarly refused consent to the filing of a brief of Amicus Curiae in the case of Swann vs. Adams, Et Al.

FURTHER AFFIANT SAYETH NAUGHT.

STEWART D. ALLEN

SWORN TO AND SUBSCRIBED before me this 25 day of April, 1966.

NORMA MARTINEZ
NOTARY PUBLIC

(SEAL)

My Commission Expires: February 22, 1970

EXHIBIT "A"

I, DAVID POPPER, Attorney for the Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this 25th day of April, 1966, I served copies of the foregoing Motion to the Supreme Court of the United States on the several parties thereto as follows:

1. On the Hon. TOM ADAMS, Secretary of the State of Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to the Hon. Earl Faircloth, Attorney General State of Florida, Tallahassee, Florida.

2. On RICHARD H. M. SWANN, one of the Appellants herein, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul & Sams, 1314 First National Bank Bldg., Miami, Florida.

3. On the Hon. MARTIN BRATERMAN, Super-

visor of Election, Dade County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Thomas C. Britton, County Attorney, Dade County Courthouse, Miami, Florida.

4. On the Hon. E. L. GATES, Supervisor of Registration of Broward County, Florida by mailing a copy in a duly addressed envelope with first class postage prepaid to John U. Lloyd, Esq., County Attorney, Broward County Courthouse, Fort Lauderdale, Florida.

5. On the Hon. W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul E. Sawyer, Esq., P. O. Box 571, Key West, Florida.

6. On the Amici Curiae and/or Intervenors by mailing a copy in a duly addressed envelope with first class postage prepaid to the following:

Mallory E. Horn, Esq.
P. O. Box 1140
Tallahassee, Florida

William G. O'Neill, Esq.
P. O. Box 253
Ocala, Florida

Neal Rutledge, Esq.
111 N. E. First Street
Miami, Florida

Hon. Halley B. Lewis
P. O. Box 578
Fort Myers, Florida

Hon. John E. Mathews, Jr.
1530 American Heritage Bldg.
Jacksonville, Florida

Milton M. Ferrell, Esq.
550 Brickell Avenue
Miami, Florida

Manning J. Dauer
2255 N. W. 5th Place
Gainesville, Florida

Rivers Buford, Jr., Esq.
400 Midyette-Moor Bldg.
Tallahassee, Florida

A. Broaddus Livingston, Esq
P. O. Box 3239
Tampa, Florida

Lewis M. Kanner, Esq.
1003 DuPont Bldg.
Miami, Florida

Carl A. Hiaasen
P. O. Box 941
Fort Lauderdale, Florida

William R. Smith, Jr.
P. O. Box 3239
Tampa, Florida

DAVID POPPER, Attorney
for Petitioners
7520 Red Road
South Miami, Florida

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1966

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

MOTION OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA, TO DISMISS OR TO AFFIRM

Paul E. Sawyer, Esquire
County Attorney
Post Office Box 571
Key West, Florida
Attorney for W. B. Freeman,
Supervisor of Elections of
Monroe County, Florida,
Appellee.

Leo L. Foster
John A. Madigan, Jr.
Seymour H. Rowland, Jr.
PARKER, FOSTER & MADIGAN
Brock Building - Post Office Box 669
Tallahassee, Florida
Attorneys for W. B. Freeman,
Supervisor of Elections of
Monroe County, Florida,
Appellee.

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. ———

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

MOTION OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA, TO DISMISS OR TO AFFIRM

MOTION TO DISMISS OR TO AFFIRM

The Appellee, W. B. Freeman, Supervisor of Registration of Monroe County, Florida, in the above-entitled case moves to dismiss or to affirm on the grounds that the Appellants do not have standing to maintain this appeal and that the questions presented are so unsubstantial as not to require further argument.

STATEMENT

This is an appeal to the Supreme Court of the United States taken by appellants, Richard H. M. Swann, the original plaintiff, and the Supervisor of Elections of Dade County, Florida, one of the defendants, from an order of the United States District Court for the Southern District of Florida, entered on March 18, 1966, holding that a legislative apportionment plan, HB 17-X(66), enacted by the Legislature of the State of Florida on March 9, 1966, did not deny the Appellant Swann or the other citizens of Florida due process of law or equal protection of the law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. The District Court refused to enjoin the application of HB 17-X(66).

The order entered below did not in any way affect the duties imposed by law upon the Appellant Supervisor of Elections of Dade County, or any other Supervisor of Elections in any county in the State of Florida. The supervisors of Elections are not constitutional officers but are legislative officers created by statutes to help carry out the duties imposed upon the Legislature by *Article VI* of the *Constitution of Florida*.

It has been admitted by the authorities of Dade County, Florida that HB 17-X (66), which is attacked on this appeal, is not invidiously discriminatory insofar as it applies to Dade County, Florida.

This statement is submitted to show that the Appellants in this cause do not have standing to maintain this appeal and that the questions attempted to be presented are unsubstantial.

OPINIONS BELOW AND APPENDICES

1. The opinion and order appealed entered on March 18, 1966, by the United States District Court for the Southern District of Florida is printed herein as Appendix A.

2. The opinion and order of the United States District Court for the Southern District of Florida entered on December 23, 1965, is printed herein as Appendix B.

3. Memorandum prepared by counsel for the Appellant Supervisor of Elections of Dade County, Florida, addressed to the Mayor of Metro, Dade County, Florida, and the Dade County Board of County Commissioners, dated March 21, 1966, is printed herein as Appendix C.

4. Criteria and Guideline for Reapportionment as Established by the Federal Courts, prepared by the Attorney General of the State of Florida, dated March 2, 1966, is printed herein as Appendix D.

5. The Appellant Swann's complaint through paragraph VI filed on or about March 28, 1962, is printed herein as Appendix E.

ARGUMENT

1. THE APPELLANTS DO NOT HAVE STANDING TO MAINTAIN THIS APPEAL:

It is a fundamental rule of great antiquity and one of constant and continuing application that a person may not invoke the aid of the judiciary, state or federal, to rule upon a question unless that person has a direct, immediate and personal interest to be served. The courts do not favor a volunteer or an officious intermeddler and will not answer abstract questions posed out of curiosity or give an advisory opinion on speculative future events at the request of one not having the requisite interest in the cause.

Especially is this true where a litigant attacks the constitutionality of legislation, state or federal.

> "The various doctrines of 'standing,' 'ripeness,' and 'mootness,' which this Court has evolved with particular, though not exclusive, reference to such cases are but several manifestations—each having its own 'varied application' — of the primary conception that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action. ***"This court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought

into actual, or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.'***"

(Poe v. Ullman, 367 US 497, 504.)

"A federal court cannot 'pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.'***" *(Baker v. Carr, 369 US 186, 204.)*

"***The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.***"

(Massachusetts v. Mellon, 262 US 447, 488.)

A litigant will not be heard to assert theoretical defects in a statute when he is not personally affected by the discrimination which he alleges exists. Neither can one complain of possible unequal operation of a statute on others less favorably situated than the complaining party. *Shearer v. Burnet, 285 US 228, 234.*

Moreover, the party who contends that a statute injures a particular class must show not only that he is a member of that class but also that he will be individually and personally affected or injured by the operation or enforcement of the statute in question. Such a person

does not have the right to meddle in the affairs of other individuals, or a class of individuals, in the absence of any actual interest in that person which is, or will be, prejudiced or impaired by the statute in question. A party who proposes to represent a class must necessarily show himself personally injured in the same manner in which he asserts the class to be injured.

"***It has been repeatedly held that one who would strike down a state statute as violative of the Federal Constitution must show that he is within the class of persons with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him.***"

(Heald v. District of Columbia, 259 US 114, 123.)

"***We will not attempt at all to review the conclusions reached on the merits, further than to remark that in a class suit if there is a failure to make out a case for any named plaintiff, Davis being the only one here, there is authority that no decree can be rendered for plaintiffs. ***In the matter of asserting constitutional rights touching discrimination, only someone who shows himself injured may complain; he cannot champion others who do not choose to complain.***"

(Cook v. Davis, 178 F. 2d 595, 599.)

"There is brought into play the familiar constitutional principle that one whose rights are not affected

by a statute as *it applies to him* is not in a position to question its validity *as applied to others.* ***"

(George v. United States, 196 F. 2d 445, 452, cert. den. 344 US 843.)

Another principle also moves into focus in this cause with respect to the right of the Appellant, Supervisor of Elections of Dade County, to maintain this appeal.

Within the ambit of the general principle that the constitutionality of a statute cannot be questioned by one whose rights are not affected thereby and who has no personal interest in defeating it, it has also been held that a public officer cannot question the validity of a statute fixing his duties since the interest of such an officer is official and not personal. The reasoning supporting this rule is sound. If the rule were otherwise a public officer could ignore any law which he deemed to be invalid and thus seriously disrupt the orderly conduct of government to vindicate purposes growing out of mere whim. This rule is subject, however, to the qualification that in any case in which the officer might be held personally liable for his acts or where he will be required to expend public funds he has such an interest as will entitle him to question the validity of the act.

"*** A petitioner does not have standing to sue unless he is 'interested in and affected adversely by the decision' of which he seeks review. His 'interest must be of a personal and not of an official nature.'

"***A litigant must show more than that he suffers in some indefinite way in common with people generally.'***".

(Joint Anti-Fascist Refugee Committee v. McGrath, 341 US 123, 151.)

"It cannot, then, be gainsaid that the Legislature has the power to prescribe qualifications for admission to the practice of law in this state, concurrent with that of the Supreme Court. And if the Legislature has such power, then the Respondents have no alternative except to administer the law in accordance with the legislative mandate. This is so because of the well established rule that a ministerial officer, charged with the duty of administering a legislative enactment, cannot raise the question of its unconstitutionality without showing that he will be injured in his person, property, or rights by its enforcement, *** or that his administration of the Act in question will require the expenditure of public funds, ***."

(Barr v. Watts, 70 So. 2d 347, 350.)

This is the general rule followed in most of the jurisdictions in this country. *Assessor of Haverhill v. New England Tel and Tel (Mass.), 124 NE2d 917; Loew v. Hagerle Bros., 226 Minn. 485, 33 NW2d 598; S. S. Kresge Company v. Howard, 357 Mo. 302, 208 SW2d 247; Columbus & G. R. Co. v. Miller, 283 US 96.*

A third rule having application here which grows out of and is a corrollary to the rule concerning "standing"

to sue is the rule of appellate jurisdiciton providing that every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment or decree sought to be appealed. One may be a proper party to a suit at its commencement and yet be without such an interest recognized as sufficient to claim the right of appeal to determine a constitutional question. The interest required must be a subsisting one, for if the interest is terminated before or at the time of the entry of the judgment or decree appealed, then the one whose interest has so ceased to exist has no standing to appeal.

"The appellee has interposed a motion to dismiss on the ground that the appellant is not a party in interest in this appeal, ***.

"It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the judgment or decree sought to be appealed from, he cannot appeal. ***"

(Hamilton Trust Co. v. Cornucopia Mines Co., 223 Fed. 494, 499, cert. den. 239 US 641.)

"***The defendant does not argue that the judgment of the district court invaded any of its rights. It is clear that by that judgment the defendant suffered no detriment and that its position was not prejudiced.

"The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. ***

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. ***"

(Sperry Rand Corp. v. Bell Telephone Laboratories, Inc., 317 F. 2d 491, 493.)

Applying the above-stated rules, it is abundantly clear neither of the Appellants in this cause has an appealable interest in the decree they seek to have reviewed.

The original plaintiff, the present Appellant Swann, filed his complaint in the United States District Court for the Southern District of Florida, on or about March 28, 1962, joining as defendants Tom Adams, Secretary of State of the State of Florida; Claude R. Brown, Supervisor of Elections of Dade County, Florida; E. L. Gates, Supervisor

of Elections of Broward County, Florida; and W. B. Freeman, Supervisor of Elections of Monroe County, Florida.

The Supervisors of Elections were sued as representatives of all other Supervisors of Elections similarly situated in the State of Florida. (See Appendix E attached hereto.) However, the Appellant Swann did not attempt to file a class suit wherein he joined as plaintiffs all other voters of Florida similarly situated. In *Baker v. Carr, 369 US 186*, at pages 204 and 205 of this Court's opinion, on the question of the standing of the plaintiffs in *Baker* to maintain the suit, this Court said in parts pertinent here:

> "***These appellants sued 'on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated. . . .' The appellees are the Tennessee Secretary of State, Attorney General, Co-ordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint.
>
> "We hold that the appellants do have standing to maintain this suit. ***"
>
> *(Baker v. Carr, 369 US 186, 204, 205, 206.)*

The Appellee does not question the general jurisdiction of this Court over the subject matter of this cause or the right of Appellants to maintain this appeal under the proper circumstances. However, the present Appellants do not seek to vindicate any right in which they have a per-

sonal interest with respect to the decree here sought to be reviewed. The verity of this fact has been admitted by counsel for the Appellant, Claude R. Brown, Supervisor of Elections of Dade County, Florida, and published in a memorandum prepared by said counsel, addressed to the Honorable Chuck Hall, Mayor of Metro, Dade County, Florida, and the Members of the Dade County Board of County Commissioners, which memorandum was dated March 21, 1966. This memorandum is reproduced in full as Appendix C, attached to this brief. This memorandum reads in part particularly pertinent here:

> "The legislative plan approved by the District Court on Friday is within acceptable limits as to Dade (within one percent in the House, 5.87 percent under-represented in the Senate). However, as to the rest of of the State, it plainly fails to meet the accepted tests: that no deviation that is avoidable be permitted, and no deviation above 10 to 15 percent will be tolerated. ***
>
> "Although Dade County is not presently invividiously discriminated against, I recommend that an appeal be taken for three basic reasons:
>
> "1. The decision is erroneous and the plan invidiously discriminates against much of the rest of the State. In this litigation, we have successfully carried the struggle thus far for all Floridians who were denied equal representation. I do not think we should stop short of a constitutional solution because we now have our relief. Whether it pleases us or not we have

assumed the role of leadership in our State. We should assume the responsibility as well. An appeal, if unsuccessful, would do no harm to us or anyone else. An appeal, if successful, could not adversely affect the citizens of Dade."

This is an unequivocable admission by the one charged with the prosecution of this appeal on the part of Dade County, Florida, that Dade County has no further interest in this litigation, that they have gotten all the relief they are entitled to, that Dade County is no longer invidiously discriminated against in the Florida Legislature, and that this appeal can neither help nor harm the Appellants regardless of its outcome. Therefore, it is unmistakably clear that the Appellants do not now have a legitimate interest to be served necessary to give them standing to maintain this appeal.

The Appellant Supervisor of Elections of Dade County has even less interest, if possible, than the Appellant Swann. As can be seen from the complaint as set out in Appendix E, attached hereto, the Supervisor of Elections of Dade County was sued in his official capacity because:

"•••it is the duty of the aforesaid supervisors of registration, within their respective counties, to receive the filing of candidates for the Legislature whose districts lie wholly within their county, to prepare ballots, to organize canvassing boards to assist in counting said returns and to issue certificates of election."

The decree and order appealed from does not run against the Supervisors of Elections. The operation or enforcement of the questioned act pursuant to the order cannot affect them personally in any way. The order does not command the Supervisors to do any affirmative act nor does it prohibit them from carrying out any of the duties imposed upon them by law. Furthermore, it has not been shown, and cannot be shown, that the said Supervisors will be required by the terms of the statute in question or the order here appealed to expend public funds for which they may be held personally liable. The Supervisors were sued in their official capacity; they have suffered no detriment or disadvantage by the enactment of House Bill 17-X(66) which is admitted by the Appellant Supervisor of Elections of Dade County; and, consequently, this Appellant has no standing to maintain this appeal.

> "***While, so far as state practice is concerned, the authority of a public officer to assail in the courts of the state the constitutional validity of a state statute is a local question, this fact does not alter the fundamental principle, governing the determination of the Federal question by this court, that the protection of the 14th Amendment against state action is only for the benefit of those who are injured through the invasicns of personal or property rights or through the discriminations which the Amendment forbids. The constitutional guaranty does no (sic) extend to the mere interest of an official, as such, who has not

been deprived of his property without due process of law or denied the equal protection of the laws."

(Columbus & G. R. Co. v. Miller, 283 US 96, 99, 100.)

II. THE QUESTIONS PRESENTED ARE UNSUBSTANTIAL:

1. On page 9 of the jurisdictional statement, the Appellants contend that the plan submitted by them to the District Court at that court's invitation was in accord with the size requirements of *Florida Constitution, Article VH, Section 2.* By including this portion of their argument in their statement of the case, the Appellants attempt to create the impression that this provision of the Constitution continues to have some efficacy and thereby imports an added weight to the apportionment plan submitted by them which does not inhere in the Florida Legislature's plan questioned on this appeal.

Obviously the Appellants have not read, or have read but have misinterpreted, three recent cases declaring *all* limitations contained in the Florida Constitution governing the size of both houses of the Legislature void and inoperative. *Sobel v. Adams (DCSD Fla.), 208 F. Supp. 316; In Re Advisory Opinion to the Governor (Fla.), 150 So. 2d 721; Jordan v. Green (Fla.), 173 So. 2d 448.*

On July 23, 1962, in the *Sobel* case, the Federal District Court ruled on pages 318 and 319 of the opinion:

"2. The Court concludes and hereby determines that the existing constitutional and statutory pro-

visions relating to the apportionment and reapportionment for the nomination and election of the Senate and the House of Representatives of the Florida Legislature are invidiously discriminatory against the plaintiffs and others similarly situated, and deny to them equal protection of the law as guaranteed by the Constitution of the United States. Said provisions are hereby found and declared to be prospectively null, void and inoperative."

(Sobel v. Adams, 208 F. Supp. 316, 318, 319.)

On January 30, 1963, the Governor of Florida requested an advisory opinion from the Supreme Court of Florida, reported as *In Re Advisory Opinion to the Governor, 150 So. 2d 721.* As can be seen from the opinion, the Governor's request grew out of his concern respecting his duties as they might be affected by the decree of the district court in the *Sobel* case.

During the course of its opinion the Supreme Court of Florida recited the above quotation from *Sobel* and gave this answer to the Governor:

"It therefore appears that the controlling question giving you concern is whether or not the judgment of the aforementioned Federal Court dated July 23, 1962, has eliminated from the Constitution of Florida the State organic limitation on the House and Senate. We think the language is clear and unequivocal wherein the Federal Court said, 'Said provisions are hereby found and declared to be prospectively null,

void and inoperative.' The only doubt might rest with whether or not the Court had jurisdiction to so order. Without conceding the right, we must concede the power, of the Federal judicial system to enforce its judgment in this cause. The jurisdiction is settled in view of the pronouncement of the Supreme Court of the United States in Baker v. Carr, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663. And so it is that the decision of the Federal Court, supra, in this cause has eliminated the limitations provided in the Florida Constitution on the size of the House and Senate, and you have the power to continue to call recurring extra sessions under Section 8, Article IV, Florida Constitution, until such time as a reapportionment bill is enacted by the Legislature in conformity with the Fourteenth Amendment of the Constitution of the United States, notwithstanding the aforesaid limitations as they were prior to the decision of the Federal Court, supra, on July 23, 1962, and which have been by virtue of that decree invalidated."

(In Re Advisory Opinion to the Governor, 150 So. 2d 721, 724.)

Both of the above two cited cases were quoted from and reaffirmed in *Jordan v. Green (Fla.), 173 So. 2d 448.*

These opinions did not purport merely to invalidate a specific section of *Article VII* of the *Florida Constitution.* These opinions specifically held that *all* limitations contained in the Constitution of Florida prior to July 23, 1962, had been eliminated and declared void and inoperative.

2. On page 10 of their jurisdictional statement, the Appellants reach outside the record and quote from a paper styled "Criteria and Guidelines for Reapportionment as Established by the Federal Courts," dated March 2, 1966, prepared by the Attorney General for the State of Florida for use by the Special Session of the Florida Legislature called in March of 1966 to draft and adopt the legislation here in question.

The quotation inserted by the Appellants is, of course, taken out of context and is extremely misleading when so considered. The entire document is attached hereto as Appendix D. It is quite clear from this document that the Attorney General did not advise or even suggest that a fifteen per cent (15%) variance from mathematical exactness could be adopted as a legal principle acceptable by the federal courts as a formula of constant application. The Attorney General simply advised the Legislature what the federal courts had done, but at the same time was careful to point out that any plan adopted must stand on its own merits, must be founded primarily on the population factor, and that any departure from mathematical exactitude must have a rational and reasonable basis.

The Appellants are constructing theories out of their own imagination and ascribing motives to the Legislature arising out of these imaginary theories having absolutely no foundation in fact. The federal district courts have not articulated or adopted a rule that might be described as the "maximum permissible deviation rule" and no such

rule was followed by the Florida Legislature in drafting and enacting HB 17-X(66).

The Appellants for their own purposes have constructed this rule, rather this phrase for it has no substance or validity as a rule, as a convenient means of describing what the Appellants choose to consider the primary guideline motivating the Florida Legislature in enacting the statute now under attack.

The District Court in *Toombs v. Fortson (Ga.), 241 F. Supp. 65*, did not adopt a rule that could be styled "maximum permissible deviation." To the contrary, the District Court in *Toombs* was careful to avoid even the suggestion that it was creating or adopting a mathematical formula as a ruling principle.

The Federal District Court for the Southern District of Florida in rendering the opinion and order made the subject of this appeal reviewed the details of HB 17-X(66) and restated the rule of decision to be:

> "Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a population basis."

After reviewing the various tests argued by the respective parties and the deviations or lack of deviations in the various district, the District Court further noted in its opinion:

"Taken individually these statistics mean little, but collectively they tend to indicate that the Legislature's proposed plan is constitutionally valid."

This opinion and order of the District Court is printed in its entirety as Appendix A, attached to this brief, and it should be remarked that neither the *Toombs* case nor the language used therein is even mentioned anywhere in the opinion here attacked.

The above-quoted rule and holding of the lower court is in strict accordance with that court's previous ruling in this litigation found in its order dated December 23, 1965, wherein the District Court held:

"***Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. ***".

The lower court's order of December 23, 1965 is printed herein as Appendix B.

The Federal District Court's following the mandate of the Supreme Court in *Reynolds v. Sims, 377 US 533*, and *Roman v. Sincock, 377 US 695*, have all been careful to point out that each reapportionment plan in the particular state involved must be considered on it own merits and

under the unique circumstances obtaining in each state.

3. There is no pattern of under representation for the populous counties and over representation for the more sparsely settled rural counties.

In *Sobel v. Adams, 208 F. Supp. 316,* the lower court noted at page 324 of the opinion:

> "The need for reapportionment arises, we are told, because of a strangle hold which the rural areas have had upon the Florida Legislature. What is urban and what is rural, so far as a county is concerned, may depend upon a point of view. For example, Polk County is the eighth Florida county in population.
>
> ***Polk County, it would appear, is neither urban nor rural but has attributes of both. An area which was rural yesterday may cease to be so tomorrow. The 1950 census showed Brevard County as having a population of 23,653. In 1960 the population was 111,435. ***The installations of the Federal Government at Cape Canaveral provide payrolls for 40,000 or more persons. The county has less of its former rural character."

(Sobel v. Adams, 208 F. Supp. 316, 324.)

The Appellants are simply engaged in a game of juggling statistics without working within any particular frame of reference as to what really constitutes an urban as distinguished from a rural area. But even accepting the

Appellants' population factor as the sole method distinguishing urban and rural areas, the only pattern appearing is the total absence of a pattern.

In the House, if the percentage deviation of a district's population per district is considered, it is found that twenty-three (23) rural counties are under represented, twenty-six (26) are over represented, while seven (7) are within two per cent (2%) of exact mathematical equality. Also in the House, five urban counties are under represented and two are over represented, while four are within two per cent (2%) of exact mathematical equality.

In the Senate, using the same test, it is found that twenty-four (24) rural counties are under represented, twenty (20) are over represented, while twelve (12) are within two per cent (2%) of exact mathematical equality.

Furthermore, the same areas are not disadvantaged in both Houses in those cases where deviation has been found necessary. The urban counties located in South Central Florida and along the Gulf Coast—Polk, Orange, Escambia, Pinellas and Hillsborough—are over represented in the Senate but, with the exception of Pinellas, are under represented in the House. But the urban counties on the Atlantic Coast—Duval, Brevard, Palm Beach, Broward and Dade—are under represented in the Senate but, with the exception of Dade and Palm Beach counties, are over represented in the House. Dade has almost exact equality in the House. Palm Beach is under represented in both Houses, while Volusia is over represented in both.

Moreover, out of sixty-seven (67) counties in the State, thirty-eight (38) deviate less than ten per cent (10%), sixty-three (63) deviate less than fifteen per cent (15%), while only four (4) deviate in excess of fifteen per cent (15%).

In actuality this juggling and balancing of statistics is an exercise having little, if any, meaning, and the Appellee agrees with the statement of the District Court in its opinion and order of March 18, 1966, now here for review, saying in part:

> "***Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests."

To say that this statute manifests a pattern of discrimination against urban areas requires a complete disregard for the facts of record.

> "***Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole. Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient com-

pliance with the requisites of the Equal Protection Clause. ***"
(Lucas v. Colorado General Assembly, 377 US 713, 735.)

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION:

1. The Appellants' argument upon this question is so presumptuous it borders on arrogance. The District Court stated its reasons for accepting the reapportionment plan enacted by the Legislature in clear unequivocal language.

Appellants take the position that the Legislature enacting the reapportionment statute in question was an unconstitutional body whose voice is not entitled to any more weight than that of the Appellants. It does not follow that because the Legislature is malapportioned it is thereby an unconstitutional and illegal body. If the assertion of illegality were accepted then it would appear that the Supreme Court of the United States has been acting erroneously in deferring to the malapportioned legislatures of the several states as being the proper bodies to create and enact reapportionment plans. Justice Douglas in his separate concurring opinion in *Baker v. Carr, 369 US 186,* at page 250 of the opinion noted:

"The recent ruling by the Iowa Supreme Court that a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act (Cedar Rapids v Cox, 252 Iowa

948, 964, 108 NW2d 253, 262, 263; cf. Kidd v. McCanless, 200 Tenn 273, 292 SW2d 40) is plainly correct."

(Baker v. Carr, 369 US 186, 250.)

Later in *Reynolds v. Sims, 377 US 533*, and some of the series of reapportionment cases decided by this Court at the same time, this Court stated:

> "***And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. ***"

(Reynolds v. Sims, 377 US 533, 586.)

> "***With the Maryland constitutional provisions relating to legislative apportionment hereby held unconstitutional, the Maryland Legislature presumably has the inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements."

(Maryland Committee v. Tawes, 377 US 656, 675,676.)

If Appellants' contention is followed to its logical conclusion there could never be a truly constitutional legislative body empowered to act. The present reappor-

tionment statute is based on figures already six years old and thus do not truly reflect the exact populations of the various counties. But as this Court has held, mathematical exactness is not required, only substantial equality. *Reynolds v. Sims, 377 US 533,* at page 579.

For that matter it is recognized that exact equality is merely an ideal impossible of fulfillment in reality. Populations are so mobile now that even an annual reapportionment schedule would not serve to reach mathematical exactness. However, the courts, recognizing the practicalities of the situation, have conceded that a schedule of every ten (10) years is reasonable and rational.

2. In a vain attempt to bolster their argument that the lower court abused its discretion, the Appellants on page 22 of their jurisdictional statement again go entirely outside the record. In footnote 4 the Appellants charge:

> "The character of the Legislature which enacted HB 17-X(66) is illustrated by its enactment of legislation by a substantial majority, despite the opposition of virtually all urban representatives, permitting small rural counties to permanently freeze the present allocation of certain tax revenues among the counties by bonding them for many decades into the future. This was done despite the Legislature's being specially convened to deal solely with reapportionment. The Gov-

ernor of Florida, chosen through an electoral process in which all voters have votes of equal weight, vetoed this enactment."

This statement is grossly misleading and foreign to any question attempted to be presented.

The special session called to enact the plan now under attack was called by the duly elected Governor of Florida to consider a plan evolved by the Governor basically following the Congressional Districts. After the special call the members of the Legislature by two-thirds vote as provided by *Article IV, Section 8, Florida Constitution,* broadened the call to consider other legislation *strictly of a local nature.* This is common practice, and could not in any way prejudice the Appellants or anyone else not within the area covered by the local bills. The Governor did veto these local bills but not for the reason insinuated by the Appellants. The bills were vetoed because the budget had already been enacted and approved for the biennium and the Governor felt these local bills should be deferred to the next regular session. All of this completely outside the record and has no relevancy to the question attempted to be raised, but the Appellee felt such assertions should be corrected in order to reflect a true picture.

In any event, the members of the Legislature who adopted the reapportionment plan here in question were experienced legislators with real knowledge of State problems and were citizens who had submitted themselves to the electorate of the State of Florida and had been chosen to

speak for the voters though coming from malapportioned districts. However, the Appellee finds no evidence that the Appellants have any special legislative abilities, nor is there any evidence that the voters of the State of Florida have ever chosen the Appellants to speak for them in any capacity.

Therefore, the Appellee respectfully submits that the Appellants have no standing to maintain this appeal, that the Appellants present no substantial question for the decision of this Court, and that this appeal should be dismissed or that the judgment and decree of the District Court should be affirmed.

Leo L. Foster
John A. Madigan, Jr.
Seymour H. Rowland, Jr.
PARKER, FOSTER & MADIGAN
Brock Building — Post Office Box 669
Tallahassee, Florida

Paul E. Sawyer, Esquire
County Attorney
Post Office Box 571
Key West, Florida
Attorneys for W. B. Freeman,
Supervisor of Elections of Monroe
County, Florida, Appellee.

APPENDICES

APPENDIX A-1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-Civil-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES

United States Circuit Judge

WILLIAM A. McRAE, JR.

United States District Judge

DAVID W. DYER

United States District Judge

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the
State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be up-

held. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the

same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount

to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisible to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt

a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "State make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florda legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX C

Memorandum

To Honorable Chuck Hall, Mayor
Members, Board of County Commissioners

Date March 21, 1966

Subject Swann v. Adams Reapportionment

From Thomas C. Britton
County Attorney

I regret to report that the District Court on March 18 approved the 48 senator 117 Representative plan adopted by a special session of the legislature after eight days deliberation on March 9. In doing so, the Court rejected the plan filed in July 1965 jointly by the County, the plaintiff, the Government Research Council and the League of Women Voters. The Court had requested the filing of plans.

Of the many plans filed, our plan (approved by this Commission on July 6, 1965) provided the most equal representation of any submitted. The maximum deviation from equal representation was 3.4 percent. It also had the virtue of providing 32 senators and 68 representatives as required by Article VII, Section 2 of the Florida Constitution.

The legislative plan approved by the District Court on Friday is within acceptable limits as to Dade (within one percent in the House, 5.87 percent under-represented in the Senate). However, as to the rest of the State, it plainly

fails to meet the accepted tests: that no deviation *that is avoidable* be permitted, and no deviation above 10 to 15 percent will be tolerated.[1] In the Senate 3 counties exceed 15 percent and 12 exceed 10 percent. In the House 3 counties exceed 18 percent and 29 exceed 10 percent. Furthermore there is a clear pattern in the discrimination in favor of the rural counties.

[1]The District Court itself announced the rule last December: "Variations are to be sanctioned *only when they cannot be avoided.* We do *not* think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N. D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle."

I have been instructed by the Mayor to take no action in this case until the Commission has had an opportunity to reach a decision on whether a third appeal to the Supreme Court should be taken. The deadline for an appeal is April 7.

Although Dade County is not presently invidiously discriminated against, I recommend that an appeal be taken for three basic reasons:

1. The decision is erroneous and the plan invidiously discriminates against much of the rest of the State. In this litigation, we have successfully carried the struggle thus far for all Floridians who were denied equal representation. I do not think we should stop short of a constitutional solution because we now have our relief. Whether it pleases us or not we have assumed the role of lead-

ership in our State. We should assume the responsibility as well. An appeal, if unsuccessful, would do no harm to us or anyone else. An appeal, if successful, could not adversely affect the citizens of Dade.

2. If neither the plaintiff nor we appeal, it is virtually certain some other party will challenge this plan, either by separate action or by appeal from an order by this Court denying leave to intervene for the purpose of appealing. See *International Union v. Fafnir Bearing Co.* (1965) 15 L. Ed. 2d 272, 275. In either event, the ultimate resolution by the Supreme Court would be delayed (if handled by others not already in the case) very probably so as to unreasonably compress the selection of legislators in time for the 1967 session or even delay the session. In this election year, it would seem highly improbable that no one will wish to assume the leadership toward equal representation for the entire state, even if the plaintiff and we elect to take no further action.

3. If this plan is not tested before the Supreme Court, a new standard of tolerance for apportionment will have been established by default, a standard which would permit the legislature in a future session to saddle Dade with the 15 percent under-representation accorded Polk by this plan. The next census is but four years away and will surely entitle us to substantial increases in representation. Of necessity all our figures now are based on census figures presently six years old.

Conclusion. In short, I urge an appeal not only because I believe it our duty and responsibility, but also because I can see a strong probability of adverse consequences to our people if we do not appeal and no disadvantage to any legitimate interest if we do appeal. However, since this is unquestionably the most important litigation in which Dade County has ever been concerned, the Commission should consider the matter and make the decision and I would welcome your judgment and instructions.

Thomas C. Britton

County Attorney

TCB/jp

APPENDIX D

STATE OF FLORIDA

Office Of The

Attorney General

Tallahassee

March 2, 1966

CRITERIA AND GUIDELINES FOR REAPPORTIONMENT AS ESTABLISHED BY THE FEDERAL COURTS.

By: Earl Faircloth

Attorney General

1. A Majority of the people must be able to elect a majority of the Legislature.

2. Membership in both houses must be apportioned on a population basis.

3. Consideration of areas, economic interest or political subdivisions standing alone do not provide valid criteria for apportionment but a combination of these factors may be used so long as population is a major consideration. Under no circumstances may these or any other factors be used except on the basis of a rational or reasonable plan of apportionment.

4. Neither mathematical exactitude nor a rigid and uniform formula is required, but each plan must be reviewed on its own merits and any deviation from population must be justified.

5. The 1960 federal census must be the criteria for determining the population of a county.

6. The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15% would be difficult to sustain as complying with "one man - one vote." It is therefore respectfully submitted that a percentage variation not exceed 15%.

APPENDIX E

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN, Plaintiff, v. TOM ADAMS, Secretary of State of the State of Florida; CLAUDE R. BROWN, Supervisor of Registration of Dade County, Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida, Defendants.	COMPLAINT

COMES NOW THE Plaintiff, RICHARD H. M. SWANN, and respectfully represents as follows:

I.

That this Court has original jurisdiction of this action, and the Plaintiff has the right to bring this suit under the Civil Rights Act, 17 Stat. L. 13 and 16 Stat. L. 144, U.S.C. Sections 1983 and 1988, which provides as follows:

"Section 1983. Civil Action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, ***"
(R. S. Sec. #22)

Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S.C. Sec. 1343 (3). This section reads as follows:

"Section 1343. Civil Rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: - - -

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

II.

Under 62 Stat. L. 968, 28 U.S.C. 2281 et seq., special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state law or statute by restraining the action of any officer of such state whenever said application is based on the unconstitutionality of such law or statute.

III.

That the Plaintiff is a citizen of the United States and of the State of Florida, and as a registered voter in said State is entitled to vote for the members of the Legislature of the State of Florida. In particular:

(a) The Plaintiff, RICHARD H. M. SWANN, resides at 7430 S. W. 57th Terrace, Dade County, and is a qualified voter in the 13th Senatorial District, also known as Dade County, Florida.

IV.

That the Defendants are all citizens of the United States and of the State of Florida, and reside within the State of

Florida; the Defendant, TOM ADAMS, is the duly qualified and acting Secretary of State of the State of Florida, and in said official capacity it is his duty, among other things, to give notice of state elections, to receive the filings of candidates for state office, to prepare ballots and instructions for the voters, to distribute copies of the election laws of the State, to receive all election returns, to organize a canvassing board to assist him to count said returns and to declare the results thereof. The Defendant, CLAUDE R. BROWN, is the duly qualified and acting Supervisor of Registration of Dade County, in the State of Florida; the Defendant, E. L. GATES, is the duly qualified and acting Supervisor of Registration of Broward County, in the State of Florida; the Defendant, W. B. FREEMAN, is the duly qualified and acting Supervisor of Registration of Monroe County, in the State of Florida.

This action is brought against the aforesaid Supervisors of Registration individually and as representatives of all other supervisors of registration similarly situated in the State of Florda; such persons are so numerous as to make it impracticable to bring them all before the Court; there is a common question of law involved, namely the constitutionality of Article VII, Sections 2 and 3, of the Constitution of the State of Florida, and Chapter Ten, Florida Statutes, 1961, Section 10.01 and Section 10.03, and of Chapter Ten, Florida Statutes, 1961, Proposed Sections 10.01 and 10.03, and common relief is sought against all members of the class. In said official capacity it is the duty of the aforesaid supervisors of registration, within their respective counties, to receive the filing of candi-

dates for the Legislature whose districts lie wholly within their county, to prepare ballots, to organize canvassing boards to assist in counting said returns and to issue certificates of election.

V.

That Article 14, Section 1, of the United States Constitution, provides in part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This provision of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and that their votes shall be equally effective with any other vote cast in said state elections.

VI.

That the Plaintiff, as a citizen of the United States and of the State of Florida, has the right conferred by the Constitution of the State of Florida, to have the entire membership of the Florida Legislature reapportioned every ten years. Article VII, Sections 2 and 3 of the said Florida Constitution, provides, in part, as follows:

> "Article VII, Section 2. Number of Members of Senate and House of Representatives; Terms: The

Legislature shall consist of not more than thirty-two members of Senate, and of not more than sixty-eight members of the House of Representatives. The members of the House of Representatives shall be elected for terms of two years, and the members of the Senate shall be elected for terms of four years except as hereinafter provided."

"After VII, Section 3. Apportionment of Representatives in Senate and House of Representatives. The Legislature that shall meet in regular session A. D. 1925, and those that shall meet every ten years thereafter, shall apportion the Representation in the Senate, and shall provide for *thirty-eight (38) Senatorial Districts, such Districts to be as nearly equal in population as practicable,* but no county shall be divided in making such apportionment, and each district shall have one Senator; and, at the same time, the Legislature shall also apportion the Representation in the House of Representatives, and shall allow three (3) Representatives to each of the five most populous counties, and two (2) Representatives to each of the next eighteen more populous counties, and one Representative to each of the remaining counties of the State at the time of such apportionment. Should the Legislature fail to apportion the Representation in the Senate and in the House of Representatives, at any regular session of the Legislature at any of the times herein designated, it shall be the duty of the Legislature or Legislatures succeeding such regular session of the Legislature, either in special or regular

session, to apportion the Representation in the Senate and in the House of Representatives as herein provided. The preceding regular Federal or regular State Census, whichever shall have been taken nearest any apportionment of Representatives in the Senate and in the House of Representatives, shall control in making any such apportionment." (Underscoring Added)

The intent and purpose of the aforesaid provisions of the said Constitution is that the members of the Legislature must be elected by the people of the State of Florida, on a basis of fair and equal representation of the individual electors, in said state and that the said Senators and Representatives must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.

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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

1966

NO. ~~1254~~ 136

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida
Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,
Appellees.

On Appeal From the United States District Court
In and For the Southern District of Florida

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

EARL FAIRCLOTH
Attorney General

EDWARD D. COWART
Assistant Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 1314

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida
Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,
Appellees.

On Appeal From the United States District Court
In and For the Southern District of Florida

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

PRELIMINARY STATEMENT

On May 16, 1966, the Appellants filed in this Court their Jurisdictional Statement supplementing their appeal from an order of the United States District Court for the Southern District of Florida, dated March 18, 1966, which order approved, as meeting constitutional standards, the reapportionment statute enacted by the Florida Legislature. The Appellees, believing that the matters set forth

herein will demonstrate the lack of substantialness in the question sought to be presented by such appeal, file this their Statement in Opposition to Appellants' Jurisdictional Statement, and include their Motion to Affirm the Judgment of the Court below, upon the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

PRIOR PROCEEDINGS

The opinion and order appealed from were entered on March 18, 1966, by the United States District Court for the Southern District of Florida in which the District Court ruled that House Bill 17-X(66), the plan of apportionment of the Florida Legislature, met federal constitutional standards and was accepted by that court as a standard to be used in selecting members for the 1967 session of the Florida Legislature; the beforementioned opinion and order are imprinted herein as Appendix B. Earlier opinions and orders entered in this cause are listed as:

(a) *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla., 1962).

(b) *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla., 1963).

(c) *Swann v. Adams*, 378 U.S. 553. Listed herein as Appendix B-1.

(d) *Swann v. Adams*, (S.D. Fla., entered December 23, 1965), listed herein as Appendix B-2.

(e) *Swann v. Adams*, _____ U.S. _____; 34 U.S. L. Week 3291, decision entered February 25, 1966. Listed herein as Appendix B-3.

STATEMENT OF FACTS

On February 25, 1966, this Court entered its opinion and order reversing the District Court's order of December 23, 1965, which held, inter alia, that the reapportionment of the State of Florida under HB 19-XX(65), although unconstitutional, would be accepted as an interim plan until sixty days after the adjournment of the 1967 regular session of the Florida Legislature. This Court also remanded the case to the District Court with instructions that a valid reapportionment be made for the 1966 elections (Appendix B-3).

The Governor of Florida, guided by the oft-repeated pronouncement by this Court and many Federal District Courts that they are reluctant to reapportion State legislatures by judicial fiat until it becomes evident that a valid reapportionment cannot be affected by the Legislatures involved, called the Florida Legislature into special session commencing March 2, 1966, to make another effort to reapportion in accordance with constitutional standards. On March 9, 1966, the Special Session of the Florida Legislature duly passed and enacted House Bill 17-X(66), Chapter 66-1, Laws of Florida, (Appendix A) which was approved by the Governor on March 10, 1966.

House Bill 17-X(66) was then presented to the U.S. District Court for the Southern District of Florida, and the Appellees herein moved the Court to accept the bill as a valid reapportionment scheme for the Legislature of the State of Florida. The District Court, after hearing arguments on the Appellees' motion and other pending matters, entered its Order on March 18, 1966, approving H. B. 17-X(66) as meeting constitutional standards and accepting it as a standard to be used in selecting members for the 1967 session of the Florida Legislature. Since the entry of the District Court's Order on March 18, 1966, candidates have qualified for office and Primary elections have been held in Florida.

The Appellants are now before this Court requesting that it take jurisdiction over this matter and are assailing the provisions of House Bill 17-X(66), as being unconstitutional.

The Appellees are confident that arguments presented herein will demonstrate that the lower Court did not abuse its discretion in approving HB 17-X(66), that the Appellants have not been harmed in any way and have no further standing in this cause, and that the questions presented are so unsubstantial as to not need further argument.

STATUTES INVOLVED

Under Attack in this proceeding is House Bill 17-X, Chapter 66-1, Laws of Florida (Appendix A).

QUESTIONS PRESENTED

I. Does the approval of House Bill 17-X(66), by the United States District Court constitute an abuse of discretion vested in said Court?

II. Do the Appellants have any further legal standing to maintain this appeal and are the questions substantial enough to warrant this Court taking jurisdiction over these matters?

ARGUMENT

I. DOES THE APPROVAL OF HOUSE BILL 17-X(66) BY THE UNITED STATES DISTRICT COURT CONSTITUTE AN ABUSE OF DISCRETION VESTED IN SAID COURT?

The Appellees submit that this question should be answered in the negative.

In order to provide the Court with an analysis of House Bill 17-X(66), the Appellees submit the following to the court:

(1) House Bill 17-X(66), provides for a bicameral Legislature of 48 Senators and 117 Representatives.

(2) The maximum population variance ratio in the reapportioned Senate in the State of Florida is 1.30 to 1. 48.61% of the population elect 50% of the Senate. The average population per Senator is 103,158. The smallest

senatorial district is 87,847 and the largest is 114,053, or a maximum population variance ratio of 1.30 to 1 (Appendix A-1).

(3) With respect to the House the maximum population variance ratio in the reapportioned House of Representatives of the State of Florida is 1.41 to 1. 50.43% of the population elect 50.43% of the House of Representatives. The average population per member is 42,321. The smallest representative district is 34,584 and the largest is 48,785, or a maximum population variance ratio of 1.41 to 1 (Appendix A-2).

A further analysis of House Bill 17-X(66) will indicate that only one senatorial district exceeds 15% with a maximum of 15.09% under average variation (See Appendix A-1). In the House, an analysis of the variation indicates that 3 house districts exceed 15% with a maximum variance of 18.28%. These three districts make up a total relatively small number of 7 members of the 117 member House of Representatives.

In view of the foregoing analysis your Appellees concede that the legislative plan as found in House Bill 17-X (66) does not meet precise mathematical exactitude, nor does it stay within the confines of the often referred to "15% variation"; but the plan, when considered as a whole, does use population as the major consideration in the apportionment of the Legislature of the State of

Florida, and when reviewed on its own merits your Appellees feel that the minute deviations from population can be justified.

This Court has expressed in the multitude of reapportionment cases that have been before it, that a state "may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme . . . ," and that "whatever the means of accomplishment, the overriding objective must be *substantial* equality of population among the various districts so that the vote of any citizen is *approximately* equal in weight to that of any other citizen in the state." *Reynolds v. Sims*, 377 U.S. 533. In referring to the language from *Sims*, supra, your Appellees submit that the court utilized the words "substantial" and "approximately." If this court meant *exact* rather than *"substantial"* or *"approximately"* then there would be a necessity for mathematical exactitude in arriving at a constitutional apportionment plan. Again, to demonstrate that this Court and other Federal District Courts do not require mathematical exactitude and consider each plan on its merits, the Appellees refer this Court to the Decision in *Schaefer v. Thompson*, 251 F. Supp. 450 (D.C. Wyoming 1965), wherein the District Court, in its own reapportionment plan for the Wyoming Senate, formulated a plan with a ratio of 2.08 to 1, and in so doing, the Court took into consideration the preservation of county boundaries and combined only contiguous counties. The opinion

of the lower court in the *Schaefer* case was affirmed Per Curiam by this Court in *Harrison* v. *Schaefer* ..... U.S. ..... 15 L. Ed. 2d 750, 86 Sup. Ct. ..... (1966).

Your Appellees would also direct the Court's attention to the fact that in *Lucas v. Colorado General Assembly*, 377 U.S. 713, 12 L. Ed. 2d 632, 84 Sup. Ct. 1472, this Court, in declaring the apportionment plan before it as unconstitutional, inferentially approved a ratio of 1.7 to 1 with respect to the House, but because of the vast disparity in the Senate, this court declared the Colorado plan as unconstitutional since the two houses as constituted in the plan were not severable and therefore the whole plan was required to fall. When we compare the plan in the *Lucas* case together with House Bill 17-X as passed by the Florida Legislature, it is clear that the maximum population variance ratio in the Senate, is 1.30 to 1, and the maximum population variance ratio in the House, 1.41 to 1, is a more nearly perfect plan.

The Appellants have made special reference to the often referred to 15 per cent variation allowable in reapportionment cases which originally developed in *Toombs* v. *Fortson*, 241 F. Supp. 65 (1965), wherein the court stated:

> "We decline to set a mathematical formula to be followed but we do hold that a variance of more than 15 per cent would be difficult, if not impossible, to justify. It may be that there will be some later elucidation by the Supreme Court on this complex ques-

tion but until such event occurs, we will base any test as to the reasonableness of variances on the departure figure of 15 per cent."

The beforementioned standard was again pronounced in *Crawford County Bar Association v. Faubus*, 238 F. Supp. 290, affirmed without opinion by this Court at 34 U.S. L. Week 3289. See also *Yancey v. Faubus*, 251 F. Supp. 998 (Ark. 1965) affirmed without opinion, 34 U.S. L. Week 3289, wherein the court stated:

". . . the authorities do suggest that deviation of not more than 15% either way is tolerable."

In dealing with the 15% variation principle the U. S. District Court of Florida in its order of December 23, 1965, held the following:

". . . precise exactness cannot of course be achieved but only such minor departures as necessity demands will be permittted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the 15% variance allowed in *Toombs v. Fortson* (N.D. Ga. 1965), 241 F. Supp. 65, established a rule of tolerence that will be followed as a legal principle."

Your Appellees submit that a most careful analysis of House Bill 17-X(66) will indicate that there is no built-in 15 per cent deviation in the Florida plan of apportionment and, at best, the variations are only in those instances where they could not be avoided, taking into consideration

the integrity of county boundaries and compatible, contiguous territories. The plan for Florida apportionment would reflect a more perfect tolerance than even that in the Ohio apportionment scheme, which had a built-in 15% variance ratio and was approved by the District Court and affirmed by this Court, see *Nolan* v. *Rhodes*, 251 F. Supp. 584, (1965), affirmed ..... U.S. ....., 15 L. Ed. 2d 616, 86 Sup. Ct. 716 (1966).

The Appellants have also contended that the District Court abused its discretion in attaching a presumption of validity to the plan enacted by the Florida Legislature on the basis that the plan was not adopted by a constitutional legislature. We do not agree that the Legislature of the State of Florida as it existed when House Bill 17-X (66) was passed was an illegal or outlawed Legislature and submit that the last legislative body elected by the people of the State of Florida is a *de jure* legislature, or at least a *de facto* legislature, and is capable of functioning as such. This premise was also recognized by Justice Douglas in his separate concurring opinion in *Baker* v. *Carr*, 369 U.S. 186 at page 240:

> "The recent ruling by the Iowa Supreme Court that a Legislature, though elected under an unfair apportionment scheme, is nonetheless a Legislature empowered to act (*Cedar Rapids* v. *Cox*, 252 Iowa 948, 964, 108 NW 2d 253, 262, 263; cf. *Kidd* v. *McCanless*, 200 Tenn 273, 292 SW 2d 40) is plainly correct."

The foregoing principle was again recognized later in *Maryland Committee v. Tawes*, 377 U.S. 656, wherein the court held:

> ". . . With the Maryland constitutional provisions relating to legislative apportionment hereby held unconstitutional, the Maryland Legislature presumably has the inherent power to enact at least temporary reapportionment legislation pending adoption of the state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements."

In conclusion your Appellees submit that there just cannot be a legislative void in any state government.

In their Jurisdictional Statement the Appellants allude to the fact that their plan was made in accord with the size requirement contained in Art. VII, Section 2 of the Constitution of Florida, which provides in part:

> "The Legislature shall consist of not more than 32 members of the Senate and not more than 68 members of the House of Representatives."

In their footnote on page 9 it is noted that the above quoted section of the Florida Constitution has never been repealed. Your Appellees submit that three recent cases have declared all limitations contained in the Florida Constitution covering the size of both houses of the legislature void and inoperative. See *Sobel v. Adams* (DCSD Fla.), 208

F. Supp. 316; *In Re Advisory Opinion to the Governor* (Fla.), 150 So. 2d 721; *Jordan v. Green* (Fla.), 173 So. 2d 448.

In the final analysis, it appears from the Appellants' position that they feel that the lower court has abused its discretion by not adopting the plan submitted by a group representing a small segment of the State of Florida over and above the plan adopted by the Legislature of the State of Florida, which is the representative group of all the people of Florida. The Appellees submit that if any presumption should be given to the plans submitted to the lower court then the presumption should be in favor of House Bill 17-X(66) which is an expression of the will of the people of the State of Florida through their Legislature.

II. DO THE APPELLANTS HAVE ANY FURTHER LEGAL STANDING TO MAINTAIN THIS APPEAL AND ARE THE QUESTIONS SUBSTANTIAL ENOUGH TO WARRANT THIS COURT TAKING JURISDICTION OVER THESE MATTERS?

1. THE APPELLANTS HAVE NO FURTHER LEGAL STANDING TO MAINTAIN THEIR APPEAL.

There is a fundamental rule of law that no person may seek the aid of the courts, state or federal, to rule upon a question unless such a person has a direct, immediate, or personal interest to be preserved. The remaining Appellants in this cause have maintained their position in this suit because they had presented a class action for them-

selves and other persons similarly situated in Dade County, Florida. Your Appellees respectfully submit to the Court that further analysis of House Bill 17-X(66) would indicate that in the Senate plan the variation in the Senatorial Districts affecting Dade County reveal that there is a 5.88% variation in over-representation. In the House of Representatives the plan is more nearly perfect in that there is only 0.43% variation from an average representation. Your Appellees submit that there has been no showing that there has been any harm done to the Appellants or other similarly situated voters in Dade County.

The fundamental rule that a person may not seek the aid of the judiciary to rule upon a question unless the person has a direct, immediate and personal interest to be served or there is a showing that such person will be harmed has been applied in reapportionment cases. [See *Stout v. Bottorff*, 246 F. Supp. 825 (Ind. 1965) wherein a resident of Marion County, and a member of the Senate of the 94th General Assembly of Indiana, was without standing to assert that the 1965 Apportionment Act was invalid because it diluted votes of some residents of other parts of the state, where he made no complaint of debasement of his vote or those of Marion County voters generally.]

The Appellees concede that the Appellants had standing in this case prior to these proceedings because they had demonstrated to the Courts the unconstitutionality of apportionment of the State of Florida as it applied to them as residents of Dade County; but there is another fundamental rule concerning "standing" which provides that

with respect to appellate jurisdiction every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment sought to be appealed.

> "It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. *The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the judgment or decree sought to be appealed from, he cannot appeal.*" [Emphasis supplied]

(*Hamilton Trust Co. v. Cornucopia Mines Co.*, 223 Fed. 494, 499, cert. den. 239 US 641.)

See also:

> "The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. • • •

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. * * *"
(*Sperry Rand Corp. v. Bell Telephone Laboratories, Inc.*, 317 F. 2d 491, 493.)

In considering the foregoing cases and the analysis of House Bill 17-X(66) with respect to the position of the Appellants and other persons similarly situated in Dade County it is obvious that the Appellants no longer have standing or an interest in the decision that they seek to have reviewed by this Court.

2. THE QUESTIONS PRESENTED ARE UNSUBSTANTIAL.

The Appellants in their Jurisdictional Statement have attempted to build various "straw men" in the questions presented by them to this Court. In the second question on page 5 of said jurisdictional statement they assume the premise that there are certain counties under-represented to the extent of 15.09% in the Senate, which denied the Appellants due process or equal protection of the law in violation of the 14th amendment of the Constitution of the United States. An analysis of the question as presented by the Appellants indicates there is but one senatorial district which has 15.09% under-representation and it consists of Okaloosa, Walton and Holmes Counties, and does not in any way affect the representation of the Appellants or other voters in their senatorial district.

In the third question presented by the Appellants on Page 5 of said Jurisdictional Statement they assume the premise that there are deviations from mathematical equality in excess of 15% in 7 of the 117 House of Representative Districts. The Appellees' analysis of House Bill 17-X(66) indicates that the excess of 15% in the House of Representatives affects only three House of Representative Districts which encompass seven members of the House of Representatives; and again, they do not pertain to the House Districts in which the Appellants reside.

The Appellants further allude to the fact that there is a pattern of under-representation in the populous urban areas and over-representation for the sparsely settled rural counties in both legislative houses, as constituted in House Bill 17-X(66). Your Appellees submit that there is no pattern of discrimination with respect to rural or urban areas and the plan considered by the Lower Court has maintained population as its first and overriding consideration with an honest and sincere effort to maintain the integrity of county lines and compatible contiguous areas as an essential element for a constitutional apportionment of the State of Florida.

Lastly, the Appellants contend in question 8 beginning on page 7 of their jurisdictional statement that the three senators who are "grandfathered" or held over from the previous Senate, while other Senators are not so "grandfathered" or held over, deny the Appellants due process of law or equal protection of the law in violation of the 14th amendment of the Constitution. An analysis of this

contention in House Bill 17-X(66) will indicate that the hold-over Senators are those who represent the same constituents and same districts in which they were elected. There has been no shifting of district lines, no shifting of constituency, with regard to these Senators, and this certainly did not affect the Appellants or anyone residing in the Districts from which the Senators are elected since there has been no new constitutents added to their respective districts.

CONCLUSION

The Appellees respectfully submit that there has not been demonstrated in this appeal any abuse of discretion committed by the lower court, and that the Appellants do not have any further legal standing to maintain this appeal and the questions presented are so unsubstantial as to not warrant this court taking jurisdiction over this case, and the decision of the lower court should be affirmed without further argument.

Respectfully submitted

EARL FAIRCLOTH
Attorney General

EDWARD D. COWART
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

APPENDICES

APPENDIX A

Chapter 66-1

House Bill 17-X

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District—Escambia and Santa Rosa counties.

Second District—Escambia and Santa Rosa counties.

Third District—Okaloosa, Walton and Holmes counties.

Fourth District—Bay, Washington and Gulf counties.

Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District—Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District—Duval county.

Tenth District—Duval county.

Eleventh District—Pinellas county.

Twelfth District—Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District—Dade and Monroe counties.

Fourteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District—Dade and Monroe counties.

Eighteenth District—Duval county.

Nineteenth District—Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District—Orange county.

Twenty-First District—Hillsborough county.

Twenty-Second District—Hillsborough county.

Twenty-Third District—Hillsborough county.

Twenty-Fourth District—Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District—Polk county.

Twenty-Seventh District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District—Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the Secretary of State as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of the state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6

Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake county and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population

of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under Chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX A-1

48 Senatorial Districts

Maximum Population — Variance Ratio of 1.30 to 1

48.61% of the Population elects 50% of the Senate

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
1,2	Escambia & Santa Rosa	2	203,376	101,688	1.46	
3	Okloosa, Walton & Holmes	1	87,595	87,595	15.09	
4	Washington, Bay & Gulf	1	88,317	88,317	14.39	
5,6,8,25	Jackson, Calhoun, Gadsden, Liberty, Franklin, Waukulla, Leon, Jefferson,					

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
	Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker & Nassau	4	443,885	110,971		7.57
9,10,18,31	Duval	4	455,411	113,853		10.37
14,15,16, 41	St. Johns, Flagler, Volusia, Seminole, Lake, Osceola, Sumter, Marion, Citrus, Hernando, & Pasco	4	412,021	103,005	0.15	
19,20,36	Orange	3	263,540	87,847	14.84	
37	Brevard	1	111,435	111,435		8.02
11,29,32, 38	Pinellas	4	374,665	93,666	9.20	

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
21,22,23, 34	Hillsborough	4	397,788	99,447	3.60	
27,28	Manatee, Sarasota, Hardee, DeSoto, & Highlands	2	191,454	95,727	7.20	
7,26	Polk	2	195,139	97,570	5.42	
12,	Indian River, Okeechobee, St. Lucie & Martin	1	87,959	87,959	14.73	
24	Charlottee, Glades, Hendry, Lee & Collier	1	93,955	93,955	8.92	
33,35	Palm Beach	2	228,106	114,053		10.56
30,39,48	Broward	3	333,946	111,315		7.91
13,17,40, 42,43,44, 45,46,47	Dade & Monroe	9	982,968	109,219		5.88
		48	4,951,560			

App. 18

APPENDIX A-2

117 Representatives

Average per Representative, 42,321. Maximum Population-Variance Ratio of 1.41 to 1, 50.43% of the Population elects 50.43% of the House.

Counties	No. of Rep.	Total Pop.	Aver. Pop. per. Rep.	Per Cent Variation Under Aver.	Per Cent Variation Over Aver.
Bay and Gulf	2	77,068	38,534	8.95	
Escambia	4	173,829	43,457		2.68
Holmes, Walton and Washington	1	37,669	37,669	10.99	
Okaloosa and Santa Rosa	2	90,722	45,361		7.18
Jackson and Calhoun	1	43,630	43,630		3.09
Gadsden and Liberty	1	45,127	45,127		6.63
Leon, Wakulla, Franklin	2	86,058	43,029		1.67

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Jefferson, Dixie Taylor, Levy	1	37,554	37,554	11.27	
Hamilton, Suwannee, Madison, Lafayette	1	39,709	39,709	6.17	
Gilchrist, Putnam, Alachua	3	109,154	36,385	14.03	
Union, Bradford, Clay	1	38,024	38,024	10.15	
Nassau, Baker, Columbia	1	44,629	44,629		5.45
Duval	11	455,411	41,401	2.17	
Citrus, Hernando, Marion, Sumter	2	83,958	41,979	0.81	
Flagler, St. Johns	1	34,600	34,600	18.24	
Lake, Seminole	3	112,330	37,443	11.53	
Pasco	1	36,785	36,785	13.08	
Volusia	3	125,319	41,773	1.29	
Brevard	3	111,435	37,145	12.23	
Orange, Osceola	6	282,569	47,095		11.28

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Hillsborough	9	397,788	44,199		4.44
DeSoto, Hardee, Highlands	1	45,391	45,391		7.25
Manatee	2	69,168	34,584	18.28	
Polk	4	195,139	48,785		15.27
Sarasota	2	76,895	38,448	9.15	
Pinellas	9	374,665	41,629	1.64	
Charlotte, Collier, Glades, Hendry, Lee	2	93,955	46,978		11.00
Indian River, Martin, Okeechobee, St. Lucie	2	87,959	43,980		3.92
Palm Beach	5	228,106	45,621		7.80
Broward	8	333,946	41,743	1.37	
Dade	22	935,047	42,502		0.43
Monroe	1	47,921	47,921		13.23
	117	4,951,560			

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

RICHARD H. M. SWANN, Plaintiff,
v. No. 186-62-M-CIVIL-DD
TOM ADAMS, Secretary of State of the State of Florida, et al., Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of

course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majorty of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA,

Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

/s/Warren L. Jones
Warren L. Jones

United States Circuit Judge

/s/Wm. A. McRae, Jr.
William A. McRae, Jr.

United States District Judge

/s/David W. Dyer
David W. Dyer

United States District Judge

APPENDIX B-1

SUPREME COURT OF THE UNITED STATES

SWANN *v.* ADAMS et. al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 297. Decided June 22, 1964.

Per Curiam.

The judgment below is reversed. *Reynolds v. Sims*, — U. S. —. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds* v. *Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds*.

Mr. Justice Clark would reverse on the grounds stated in his opinion in Reynolds v. Sims, _____ U. S. _____.

Mr. Justice Stewart would remand for further proceedings consistent with the views expressed in his dissenting opinion in *Lucas* v. *Colorado General Assembly* and *WMCA, Inc.* v. *Lomenzo*, — U. S. — .

Mr. Justice Harlan dissents for the reasons stated in his dissenting opinion in *Reynolds* v. *Sims*, — U. S. —.

APPENDIX B-2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

RICHARD H. M. SWANN, Plaintiff,
v. No. 186-62-M-CIVIL-DD
TOM ADAMS, Secretary of State of the State of Florida, et. al., Defendants.

Before JONES, Circuit Judge and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to

which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of

example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in *Fortson* v *Dorsey*, 379 U.S. 433, 85 S. Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on

June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other

than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1 (3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S. Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be

avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Forston, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal

Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

/s/Warren L. Jones
Warren L. Jones
United States Circuit Judge

/s/Wm. A. McRae, Jr.
William A. McRae, Jr.
United States District Judge

/s/David W. Dyer
David W. Dyer
United States District Judge

APPENDIX B-3

SUPREME COURT OF THE UNITED STATES

SWANN et al. *v.* ADAMS et. al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973 Decided February 25, 1966.

Per Curiam.

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to "meet

the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims* . . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

Mr. Justice Harlan and Mr. Justice Stewart would affirm the judgment.

Mr. Justice Fortas took no part in the consideration or decision of this case.

APPENDIX C

STATE OF FLORIDA

Office Of The

ATTORNEY GENERAL

Tallahassee

March 2, 1966

CRITERIA AND GUIDELINES FOR REAPPORTIONMENT AS ESTABLISHED BY THE FEDERAL COURTS.

By: Earl Faircloth
Attorney General

1. A majority of the people must be able to elect a majority of the Legislature.

2. Membership in both houses must be apportioned on a population basis.

3. Consideration of area, economic interest or political subdivisions standing alone do not provide valid criteria

for apportionment but a combination of these factors may be used so long as population is a major consideration. Under no circumstances may these or any other factors be used except on the basis of a rational or reasonable plan of apportionment.

4. Neither mathematical exactitude nor a rigid and uniform formula is required, but each plan must be reviewed on its own merits and any deviation from population must be justified.

5. The 1960 federal census must be the criteria for determining the population of a county.

6. The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15% would be difficult to sustain as complying with "one man - one vote." It is therefore respectfully submitted that a percentage variation not exceed 15%.

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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

BRIEF OPPOSING MOTIONS OF APPELLEES

THOMAS C. BRITTON
1626 Dade County Courthouse
Miami, Florida 33130

STUART SIMON
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant
Supervisor of Elections of Dade
County, Florida

D. P. S. PAUL
1314 First National Bank Building
Miami, Florida, 33131

P. D. THOMSON
1314 First National Bank Building
Miami, Florida, 33131

NEAL RUTLEDGE
111 N. E. First Street
Miami, Florida, 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida

Attorneys for Appellant
Richard H. M. Swann

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida

Appellees.

BRIEF OPPOSING MOTIONS OF APPELLEES

This brief is submitted by Appellants in response to (a) the Statement of Appellees Opposing Jurisdiction and Motion to Affirm submitted by the Attorney General of Florida, and (b) the Motion of Appellee, W. B. Freeman, Supervisor of Registration of Monroe County, Florida, to Dismiss or To Affirm. The substantive matters traversed in these two pleadings are the same.

I

Appellees contend that the deviations from mathematical equality contained in the Florida Reapportionment Act (House Bill 17-X(66)), herein challenged, are within the undefined outer limits of "substantial" or "approximate" equality, since the Fourteenth Amendment does not require "exact" equality. To reach this conclusion Appellees constantly compare the deviations which will prevail under House Bill 17-X(66) with deviations sanctioned judicially in other states. This side-steps the issue. Nowhere do Appellees compare the deviations in House Bill 17-X-(66) with the smaller deviations of the more perfect plan submitted by Appellants at the express invitation of the District Court and rejected without explanation by the District Court. By their silence Appellees concede that Appellants' plan comes much closer to the standard of an equal voice for each voter, while at the same time meeting all other standards for legislative apportionment articulated by this Court.

While an 18 percent deviation may represent "substantial" or "approximate" equality to a legislative body which in June, 1965, enacted a deviation of 69 percent into law, it represents a denial of equal protection to Appellants because it contains deviations five times as great as are required, as Appellants' plan shows. A plan is constitutional only when it meets the test stated by the District Court on December 23, 1965:

> "... only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided."

It is unfortunate that the District Court refused to apply its own test.

The Attorney General declares on page 9 of Appellees' motion that the variations in House Bill 17-X (66) occur only in those instances where they cannot be avoided. This statement is refuted by his own silent concession that Appellants' plan is more perfect and Appellants' clear demonstration that in their plan the maximum deviation from equality is 1.95 percent in one house and 3.35 percent in the other house rather than 18.3 percent as contained in House Bill 17-X (66).

II

Both Appellees' motions contend that the Appellants, who are situated in Dade County, have no standing for appellate purposes to challenge the District Court's ruling, since Dade County has virtually equal representation in the House of Representatives and an under-representation of only 5.9 percent in the Senate.[1] Though it is true that there are many counties under or over represented in the legislature to a far greater extent than Dade, Appellants nonetheless believe their standing is clear for the following reasons:

a) Appellant Swann seeks relief not only as a voter of Dade County, but as an urban voter of the State of

[1] The Statement of the Attorney General describes the Senate variation as a 5.9 percent over-representation on page 13 of his motion, but this is a fortuitous error.

Florida. If urban Dade County were over-represented as an individual county in the legislature while urban counties as a whole were under-represented in that legislature, Appellant Swann would be discriminated against and denied equal protection under the Fourteenth Amendment as an urban voter of Florida. If Dade County, with approximately 20 percent of the state's population, were hypothetically given 25 percent of the representation in the Florida Legislature while the remaining 75 percent of the representation was assigned wholly to rural counties, the voters of Dade County and Appellant Swann would be prejudiced and denied equal protection under the law as urban voters of Florida, despite Dade County's individual over-representation in both legislative houses. Every voter in the State of Florida and every voter in Dade County is constitutionally entitled to a properly apportioned legislature, and this entitlement was declared to be an individual personal right by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 at 736, 12 L. Ed. 2d 632, 84 S. Ct. 1472. Thus, the fundamental individual rights of Appellants have been abridged by the malapportionment enacted into law and sanctioned by the District Court; they are denied equal protection under the law as urban voters and therefore possess standing to prosecute this appeal.

b) The District Court, since the institution of this case in 1962, has followed a uniform policy of denying all motions to intervene as a party in the cause, including such motions from residents of counties in many parts of the State, other than Dade County. The notice setting final hearing on March 15, 1966 even excluded amici curiae from oral argument. Since it was therefore impossible for

a plaintiff from any other county in the State to protest against House Bill 17-X(66), Appellants addressed the Court on the general issue of constitutionality on behalf of all the voters of the State of Florida. This is made clear in the transcript of the argument:

"JUDGE JONES: Dade County is not unhappy with its own situation?

MR. BRITTON: Not in the sligh[t]est, your Honor. Under that program, in the House there is a disproportion of over five percent which we think to be totally needless. But, certainly, not invidiously discriminatory under any decision of the Court.

JUDGE JONES: And Dade County is just motivated by higher moral principles in wanting everybody else in the state to be as well treated as it has been.

MR. BRITTON: The interest is more selfish, your Honor, than that. I know of no reason why a citizen of Polk County could not come in after this Court adopts the legislature's plan and attack it in another Court proceeding. If it did, this case which had its beginning four years ago, would be prolonged perhaps for another year needlessly.

Apart from that selfish interest that I feel as a citizen here and I believe my fellow citizens feel, I do feel that it is our responsibility before

you to urge the correct, the sound, the proper legal solution to you regardless of which way it affects us.

JUDGE JONES: Well, do not misunderstand me. I was not critical. I just want to get your position clear." (Transcript, pp. 12-13)

By reason of the District Court's action in denying any intervention, Appellants are perforce the representatives of all Florida voters. It is therefore their duty and their right to assert and protect the interest of all Florida voters, including those resident in Dade County.

c) Although this is designated as a new appeal, in essence it is but a continuation of the two prior appeals in which this Court ruled favorably to Appellants. Appellants are basically seeking enforcement of the two prior opinions and judgments entered by this Court in their favor; they have standing to maintain this appeal on that ground alone.

d) Under the plan jointly proposed and submitted to the District Court by Appellants, Dade County was under-represented by 0.71 percent in the Senate and over-represented by 1.22 percent in the House of Representatives. Under House Bill 17-X(66) Dade County is under-represented by 5.9 percent in the Senate and by 0.4 percent in the House. The voters of Dade County and Appellant Swann are therefore under-represented to a greater extent under House Bill 17-X(66) than they would be under the joint plan proposed by Appellants. On this basis also, they have the legal standing to maintain this appeal.

III

Appellees misunderstand the argument contained in that portion of the Jurisdictional Statement entitled "Abuse of Discretion." Appellants do not contend that the legislature which enacted House Bill 17-X(66) was an illegal legislature incapable of enacting any legislation; rather they contend that that legislature was illegally apportioned and that its reapportionment enactments are therefore not entitled to the presumption of validity customarily accorded legislative enactments when these are attacked in a court. House Bill 17-X(66) was adopted by a legislature apportioned in accordance with a 1963 plan under which 14.5 percent of the people could elect a majority of the Senate and 27.4 percent of the people could elect a majority in the House of Representatives—a plan held unconstitutional by this Court in 1964, two years before this enactment. How then can Appellees assert that House Bill 17-X(66) meets Appellees' noble phrase "an expression of the will of the people of the State of Florida through their Legislature." All that happened was that an illegally apportioned legislature enacted a plan which, though admittedly much closer to constitutional requirements than previous failures, still failed to meet the constitutional standard requiring the closest possible approximation to mathematical equality.

All Appellants contend is that the merits and not the authorships of the three plans submitted to the District Court should have formed the basis for the District Court's decision.

CONCLUSION

For the reasons stated, this Court has jurisdiction of this action and should reverse the order below and order the District Court to reapportion the legislature of the State of Florida in the manner advocated by the Appellants in their joint plan of July 6, 1965.

Respectfully submitted,

THOMAS C. BRITTON
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida 33130

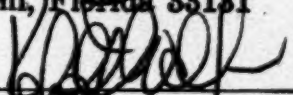
STUART SIMON
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant,
Supervisor of Elections
of Dade County, Florida

D. P. S. PAUL

P. D. THOMSON
Paul & Sams
1314 First National Bank Building
Miami, Florida 33131

NEAL RUTLEDGE
Rutledge & Milledge
111 N. E. First Street
Miami, Florida 33131



RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida 33128

Attorneys for Appellant,
Richard H. M. Swann

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1966

Office-Supreme Court, U.S.
FILED
OCT 28 1966
JOHN F. DAVIS, CLERK

No. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration
of Monroe County, Florida,

Appellees.

On Appeal from the United States District Court
for the Southern District of Florida

BRIEF FOR JOHN A. DAVIS, ALBERT A. HARTMAN and JOHN J. O'KEEFFE, as Amici Curiae

DAVID POPPER
7520 Red Road
South Miami, Florida
STEWART D. ALLEN
7520 Red Road
South Miami, Florida
JOHN M. DYER
7520 Red Road
South Miami, Florida

Attorneys for
JOHN A. DAVIS,
ALBERT A. HARTMAN and
JOHN J. O'KEEFFE,
as Amici Curiae

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IN THE

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No. 136

RICHARD H. M. SWANN
and
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On Appeal from the United States District Court
for the Southern District of Florida

BRIEF FOR JOHN A. DAVIS, ALBERT A. HARTMAN and JOHN J. O'KEEFFE, as Amici Curiae

---

OPINION BELOW

The Order appealed from was entered by the United States District Court for the Southern District of Florida on March 18, 1966, and is unreported. It is printed herein as Appendix A-1.

JURISDICTION

The Judgment or Order of the three-judge District Court was entered on March 18, 1966 (A-1). The Notice of Appeal to this Court was filed March 25, 1966, and probable jurisdiction was noted on October 10, 1966. The jurisdiction of the Court rests on 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Will political and racial elements of the voting population be disenfranchised by H.B. 17X (66)?

2. Will the votes of residents of small counties be diluted so as to deprive small counties of the "One Man - One Vote" rule set forth in this court's opinion in the case of **Reynolds** v. **Sims**, 377 U.S. 533 (1964).

INTEREST OF AMICI CURIAE

The interest of the Amici Curiae in this matter is based upon the fact that the present law in providing for multi-member representation deprives your Amici Curiae of the equal protection of the law as set forth and guar-

anteed to them under the 14th Amendment of the U. S. Constitution.

Your Amici Curiae further believe that the questions presented by them are ones that will not be raised by any other appellant or parties in this action; and the questions raised by this brief of Amici Curiae will aid this Honorable Court in determining the validity or non-validity of the present Florida reapportionment bill, and further aid the Court as to proper reapportionment, and the basis and means of providing said reapportionment. That the nature of the Petitioners interest in this appeal is as follows:

JOHN A. DAVIS is a citizen and resident of Monroe County, Florida, member of the Republican Party and a registered voter.

ALBERT A. HARTMAN is a citizen and resident of Dade County, Florida, member of the Republican Party and a registered voter.

JOHN J. O'KEEFFE is a citizen and resident of Monroe County, Florida, member of the Democratic Party and a registered voter.

It is further submitted that JOHN A. DAVIS, and ALBERT A. HARTMAN as members of the Republican Party are being discriminated against and deprived of their rights as electors for the following reason:

The predominant Republican voting areas will be disenfranchised from their choice of representation.

That JOHN J. O'KEEFFE as a member of the Demo-

cratic Party and a voter of one of the smaller counties will have his voting powers effectively diluted.

For the foregoing reasons, your Amici Curiae believe that House Bill 17X (66) as passed by the Florida Legislature and approved by the lower court will result in a serious deprivation of their constitutional rights. Your Amici Curiae further believe that the position taken by them will not be presented by either of the Appellants or Appellees before this Honorable Court. That upon information, one of the Appellants is a member of the predominant political party in the State of Florida and the other is an appointed official of the largest populous county of the State of Florida and therefore they would not be receptive or willing to present the proposition set forth by your Amici Curiae.

STATUTE INVOLVED

This appeal and the brief of Amici Curiae challenges the constitutionality of H.B. 17X (66), Chapter 66-1, Laws of Florida, as enacted by the Legislature of the State of Florida on March 9, 1966 and approved by the Governor of Florida on March 10, 1966. This legislative enactment is printed herein as Appendix B-1.

STATEMENT

Your Amici Curiae submit that this Court should not be burdened with a lengthy recitation setting forth the numerous attempts of the Florida Legislature to pass a fair reapportionment plan for the State of Florida. It is sufficient for purposes of this brief to state that on March 9, 1966, the Florida Legislature enacted H.B. 17X

(66), Chapter 66-1, Laws of Florida and the same was approved by the Governor on March 10, 1966. (Appendix B-1.)

On March 14, 1966, the Attorney General of Florida filed a motion before the three-judge District Court for the Southern District of Florida to approve H.B. 17X (66). Oral argument was heard on March 15, 1966, and on March 18, 1966, the District Court entered its opinion and order declaring H.B. 17X (66) constitutional. (Appendix A-1) This order is now before the court for review.

The Appellants filed their Notices of Appeal in the Clerk's office of the U. S. District Court for the Southern District of Florida on March 25, 1966, and this Court noted probable jurisdiction on October 10, 1966.

Prior to consideration of the jurisdictional statement in this cause both Appellants refused permission to your Amici Curiae to file a brief as friends of the court in this cause. Subsequently, pursuant to Rule 42.1 of the Supreme Court Rules, as Amended, your Amici Curiae on April 26, 1966, filed a Motion for leave to file a brief of Amicus Curiae in this cause. On October 10, 1966, this Court entered its order granting permission to your Amici Curiae to file this brief.

ARGUMENT

Point One

This case involves the right of all citizens of the State of Florida to fair and equal participation in the legislative branch of their own state government; and whether

House Bill 17X (66) passed by the Florida Legislature in Extraordinary Session did violate the equal protection clause of the 14th Amendment to the Constitution of the United States. (Appendix C-1) And further did House Bill 17X (66) violate the precepts of "One Man-One Vote" rule set forth in the case of Reynolds v. Sims (1964) 377 U.S. 533.

As Amici Curiae, your Petitioners, JOHN A. DAVIS, ALBERT A. HARTMAN, and JOHN J. O'KEEFFE, concur with Appellants in their precepts that the present Florida Reapportionment as established by House Bill 17X (66) is still prejudicial and disproportionate as to equitable legislative representation in the State Legislature for the State of Florida. However, they believe the procedure of choosing such representatives in the House of Representatives as set forth in the present House Bill 17X (66) is unconstitutional because it violates the equal protection clause of the 14th Amendment to the Constitution of the United States of America.

This Court by its own decision has stated the rule that should be followed. In the case of Reynolds v. Sims, 377 U.S. 533 (1964), the Court said:

> "And if a state should provide that the votes of citizens in one part of the state should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the state, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a state could be constitutionally permitted to enact a law pro-

viding that certain of the state's voters could vote two, five, or 10 times for their legislative representatives when voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the state would be multiplied by two, five or 10, while votes of persons in another area would be counted only on face value could be constitutionally sustainable."

In the case of **Wesberry** v. **Sanders**, 376 U.S. 1 (1963) it was stated:

"We do not believe that the framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than another would . . . run counter to our fundamental ideas of democratic government . . . . "

It is the contention of your Amici Curiae that residents of small counties will have their votes diluted so as to deprive them of the "One Man-One Vote" rule as set forth in **Reynolds** v. **Sims** (1964) 374 U.S. 533. Under the present plan, the County of Monroe has one legislator. The County of Dade twenty-two legislators. In Dade County all legislators run at large, thereby giving each of the voters in Dade County twenty-two votes for legislative representation. In Monroe County each voter has but one vote for a legislator, thereby diluting the voting power of a registered voter in Monroe County twenty-two

times. Your Petitioners do not claim that the County of Dade by its numerical superiority should not be entitled to its twenty-two legislators or more, they do however, claim that in conformity with previous decisions that districts should be set up population-wise, which would give the individual voter one vote for one legislator. Thereby, making his vote equal to the votes of any other district voting for a single legislator.

The proposition of "One Man-One Vote" appears to the Amici Curiae to be that each individual voting shall have the same weight as an individual voting in any other part of the state. The proposition of "One Man-One Vote" is not how many legislators there are for any particular number of voters, but that the weight of the vote itself be equal.

ARGUMENT

Point Two

Will a minority political party be disenfranchised by House Bill 17X (66)? This court reserved ruling on such a proposition when it stated in the case of **Fortson** v. **Dorsey**, 379 U.S. 433, as follows:

> "We treat the question as presented and our opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dictates of the equal protection clause. It might well be that, decidedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would

operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster . . . "

In the 1962 General Election for state legislator in Group One, Republican candidate McGlon received approximately 57% of the votes over the Democratic candidate Eldridge, even though Democrat Eldridge won by a vast majority on the county-wide vote. In Group Four, Republican candidate Lippincott received approximately 52% of the vote as against Democratic candidate Weissenborn, even though losing county-wide by a great majority of votes. This is also true in the case of Republican candidate MacDonald who received approximately 51% of the votes as against Democratic candidate Wilson, who again won by a vast majority of the county-wide votes. The above percentages occurred in precincts 200 to 210 inclusive. This in itself would indicate that these areas are basically Republican and would in district voting elect Republican legislators; in a county-wide vote it is an impossibility. It might also be stated that in each subsequent election this situation has been repeated.

Dade County, Florida is a county of vast population and varied interests which has no basic common interest with each other; other than being residents of the State of Florida, and of the County of Dade by geographic line. The City of Homestead, Florida, is basically agricultural and rural, while the City of Miami Beach, Florida, also a part of Dade County, is basically a resort and hotel area. The City of Hialeah, Florida, in turn is an industrial area. Their economics and their politics throughout their his-

tory have been basically different but under the present reapportionment set forth in House Bill 17X (66), all these varied interests and political differences are not taken into consideration for true representation in the State Legislature in Tallahassee. Are these different political philosophies to be disregarded as far as true representation is concerned, by the unconstitutional establishment of county-wide vote for all legislators in the geographic area of Dade County?

County and county lines are not sacrosanct, for example, Dade County is a part of three separate congressional districts, the center district being entirely in Dade County, the northern district being part in Dade County and part in Broward County, and the southern district encompassing Monroe County and Southern Dade as well. In determining these congressional districts, certainly the idea of congressmen running at large in the county was never taken into consideration. Why then should state legislators have another guide line for their election?

It is further presented by your Amici Curiae that each legislator is supposed to represent the State of Florida, and his interest should be for the benefit of the State of Florida, but if the legislator is to represent a lesser section, his representation should go to the very roots of his election, that being a specific area of population which would be equivalent with other equally populous areas. We do not believe that the Supreme Court intended to create a block-vote in a large urban area to control the state legislature in place of rural control. It however is our proposition that one is equally as evil as the other and to go from one extreme to the other de-

feats Reynolds v. Sims, supra. Surely the areas in Dade County that are predominantly Republican as well as those areas in Duval, Broward, Hillsboro and Pinellas, the other major urban counties, should not be disregarded and their thoughts should be represented in the State Legislature. This can only be done by establishing districts of approximately equal population to give opportunity to these areas that are of diverse political philosophies to elect their own representative responsible to them so that their wishes may be brought forth at the state capital.

It might be further stated, that not only is a political group being disenfranchised by virtue of county-wide voting but a racial group is also being disenfranchised. Certain sections of Dade County, Duval County and other major urban counties, where county-wide voting is held, have large Negro areas. In the 1966 Primary Election, one of their candidates obtained a run-off position in the Democratic Primary by virtue of the complete backing of the Negro vote. In the General Election, he was soundly defeated. If districts were established, the Negro population too would obtain representation for their thoughts and ideas in the legislature of the State of Florida.

It is respectfully suggested that a plan in which counties having multi-member representatives be divided into districts of approximately equal population wherein each representative would be required to live in the district from which he were elected and that only voters of that district would be permitted to vote for the representative who shall represent their district. This plan would give concentrated political and racial groups an

opportunity to have their voice heard in the State Legislature. It would eliminate inequality of voting strength in all districts of the State of Florida.

CONCLUSION

For the foregoing reasons, your Amici Curiae submits that House Bill 17X (66) passed by the Florida Legislature is unconstitutional in that it violates the equal protection clause of the 14th Amendment of the Constitution of the United States as well as the "One Man-One Vote" rule set forth in **Reynolds** v. **Sims** Supra.

It is further submitted that single representative districts is the only method which would adhere to both the equal protection clause of the 14th Amendment and **Reynolds** v. **Sims**, Supra.

DAVID POPPER
7520 Red Road
South Miami, Florida

STEWART D. ALLEN
7520 Red Road
South Miami, Florida

JOHN M. DYER
7520 Red Road
South Miami, Florida
Attorneys for John A. Davis, Albert A. Hartman and John J. O'Keeffe, as Amici Curiae

APPENDIX A-1

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-Civil-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges
PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of

course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), aff'd per curiam, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great

enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements.

We upheld such arrangements in a previous order and see no reason to reach any different result here. Accord, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, supra.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966,

meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES
United States Circuit Judge

WILLIAM A. McRAE, JR.
United States District Judge

DAVID W. DYER
United States District Judge

APPENDIX B-1

HB 17-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District — Escambia and Santa Rosa counties.

Second District — Escambia and Santa Rosa counties.

Third District — Okaloosa, Walton and Holmes counties.

Fourth District — Bay, Washington and Gulf counties.

Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District — Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District — Duval county.

Tenth District — Duval county.

Eleventh District — Pinellas county.

Twelfth District — Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District — Dade and Monroe counties.

Fourteenth District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District — Dade and Monroe counties.

Eighteenth District — Duval county.

Nineteenth District — Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District — Orange county.

Twenty-First District — Hillsborough county.

Twenty-Second District — Hillsborough county.

Twenty-Third District — Hillsborough county.

Twenty-Fourth District — Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District — Polk county.

Twenty-Seventh District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District — Pinellas county.

Thirtieth District — Broward county.

Thirty-First District — Duval county.

Thirty-Second District — Pinellas county.

Thirty-Third District — Palm Beach county.

Thirty-Fourth District — Hillsborough county.

Thirty-Fifth District — Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District — Orange county.

Thirty-Seventh District — Brevard county.

Thirty-Eighth District — Pinellas county.

Thirty-Ninth District — Broward county.

Fortieth District — Dade and Monroe counties.

Forty-First District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District — Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the secretary of state as of March 2, 1966, and any changes in [redacted] precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District — Dade and Monroe counties.

Forty-Fourth District — Dade and Monroe counties.

Forty-Fifth District — Dade and Monroe counties.

Forty-Sixth District — Dade and Monroe counties.

Forty-Seventh District — Dade and Monroe counties.

Forty-Eighth District — Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	Number of Members
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1

Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake County and one

member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein

shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX C-1

AMENDMENT XIV

SECTION 1. ALL persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.

CERTIFICATE OF SERVICE

WE, the undersigned attorneys for the Amici Curiae herein, and members of the Bar of the Supreme Court of the United States, hereby certify that on this 28th day of October, 1966, we served copies of the foregoing Brief and Appendix of Amici Curiae on the several parties thereto as follows:

1. On the Hon. TOM ADAMS, Secretary of the State of Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to the Hon. Earl Faircloth, Attorney General State of Florida, Tallahassee, Florida.

2. On RICHARD H. M. SWANN, one of the Appellants herein, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul & Sams, 1314 First National Bank Bldg., Miami, Florida.

3. On the Hon. MARTIN BRATERMAN, Supervisor of Election, Dade County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Thomas C. Britton, County Attorney, Dade County Courthouse, Miami, Florida.

4. On the Hon. E. L. GATES, Supervisor of Registration of Broward County, Florida by mailing a copy in a duly addressed envelope with first class postage prepaid to John U. Lloyd, Esq., County Attorney, Broward County Courthouse, Fort Lauderdale, Florida.

5. On the Hon. W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul E. Sawyer, Esq., P. O. Box 571, Key West, Florida.

6. On the Amici Curiae and/or Intervenors by mailing a copy in a duly addressed envelope with first class postage prepaid to the following:

Mallory E. Horn, Esq.
P.O. Box 1140
Tallahassee, Florida

William G. O'Neill, Esq.
P.O. Box 253
Ocala, Florida

Neal Rutledge, Esq.
111 N.E. First Street
Miami, Florida

Hon. Halley B. Lewis
P.O. Box 578
Fort Myers, Florida

Hon. John E. Mathews, Jr.
1530 American Heritage Bldg.
Jacksonville, Florida

Milton M. Ferrell, Esq.
550 Brickell Avenue
Miami, Florida

Manning J. Dauer
2255 N.W. 5th Place
Gainesville, Florida

Rivers Buford, Jr., Esq.
400 Midyette-Moor Bldg.
Tallahassee, Florida

A. Broaddus Livingston, Esq.
P.O. Box 3239
Tampa, Florida

Lewis M. Kanner, Esq.
1003 DuPont Bldg.
Miami, Florida

Carl A. Hiaasen
P.O. Box 941
Fort Lauderdale, Florida

William R. Smith, Jr.
P.O. Box 3239
Tampa, Florida

DAVID POPPER
7520 Red Road
South Miami, Florida

STEWART D. ALLEN
7520 Red Road
South Miami, Florida

JOHN M. DYER
7520 Red Road
South Miami, Florida
Attorneys for John A. Davis and Albert A. Hartman as Amici Curiae

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

On Appeal from the United States District Court,
Southern District of Florida

BRIEF OF APPELLANTS

THOMAS C. BRITTON
1626 Dade County Courthouse
Miami, Florida, 33130

STUART SIMON
1626 Dade County Courthouse
Miami, Florida, 33130

Attorneys for Appellant
Supervisor of Elections of Dade
County, Florida

D. P. S. PAUL
1314 First National Bank Building
Miami, Florida, 33131

P. D. THOMSON
1314 First National Bank Building
Miami, Florida, 33131

NEAL RUTLEDGE
111 N. E. First Street
Miami, Florida, 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida

Attorneys for Appellant
Richard H. M. Swann

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On Appeal from the United States District Court, Southern District of Florida

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BRIEF OF APPELLANTS

OPINIONS BELOW

The opinion and order appealed from, which were entered on March 18, 1966 by the United States District Court for the Southern District of Florida, are unreported. They appear in the Record at pages 77 - 79. Earlier opinions in this cause are:

(i) *Sobel v. Adams*, 208 F.Supp. 316 (S.D. Fla., 1962)

(ii) *Sobel v. Adams*, 214 F.Supp. 811 (S.D. Fla., 1963)

(iii) *Swann v. Adams*, 378 U.S. 553

(iv) *Swann v. Adams*, unreported (S.D. Fla., December 23, 1965); printed herein as Appendix 1 with appendix thereto deleted.

(v) *Swann v. Adams*, 382 U.S. 210 This opinion appears in the Record at pages 13 - 14.

JURISDICTION

Following the reversal of the District Court's opinion and order of December 23, 1965 (Appendix 1) by this Court on February 25, 1966 (R. 13 - 15), the Legislature of Florida was convened in Special Session by the Governor on March 2, 1966. The Legislature so convened was based on the 1963 apportionment, held unconstitutional by this Court more than two years ago. *Swann v. Adams*,

378 U.S. 553. On March 9, 1966 this Legislature enacted HB 17-X(66) reapportioning both houses of the state legislature (R. 44 - 56). The Appellants immediately attacked this plan (R. 16 - 35) as failing to meet the rule of *Reynolds v. Sims*, 377 U.S. 533, twice before applied to Florida by this Court (*Swann v. Adams*, 378 U.S. 553; *Swann v. Adams*, 382 U.S. 210), and sought to enjoin its implementation under authority of the provisions of Title 42, U.S.C., Sections 1983 and 1988 and Title 28, U.S.C., Section 1343. This appeal is from an opinion and order of the District Court entered on March 18, 1966 (R. 77 - 79) which held that the legislative apportionment just enacted met the requirements of due process and equal protection of the law as guaranteed by the Fourteenth Amendment to the Federal Constitution in all respects, and which refused to enjoin its use in state primaries scheduled to take place in May, 1966, or to make any change in the apportionment plan. Notice of Appeal by the Supervisor of Elections of Dade County, Florida, was filed with the Clerk of the United States District Court for the Southern District of Florida on March 25, 1966 (R. 80 - 85), and Appellant Swann joined in the appeal on the same day through a separate Notice of Appeal (R. 86).

The jurisdiction of the Supreme Court to review the opinion and order of the District Court by direct appeal is conferred by Title 28, U.S.C., Section 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the opinion and order herein appealed from: *Baker v. Carr*, 369 U.S. 186; *Reynolds v. Sims*, 377 U.S. 533; *Swann v. Adams*, 378 U.S. 553; and *Swann v. Adams*, 382 U.S. 210. Probable jurisdiction was noted by the Court on October 10, 1966 (R. 107).

STATUTES INVOLVED

The constitutionality of HB 17-X(66), Chapter 66-1, Laws of Florida, as enacted by the Legislature of the State of Florida on March 9, 1966 (R. 44 - 56) and approved by the Governor of Florida on March 10, 1966, is involved. This enactment is printed herein as Appendix 2.

QUESTIONS PRESENTED

1. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which certain rural counties are over-represented to the extent of 18.28 percent and certain urban counties are under-represented to the extent of 15.27 percent in the House of Representatives, deny to Appellant Swann, persons represented by Appellant Supervisor, and all other citizens of Florida due process or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

2. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which certain rural counties are over-represented to the extent of 15.09 percent and certain urban counties are under-represented to the extent of 10.56 percent in the Senate, similarly deny due process or equal protection of the law?

3. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which there are deviations from mathematical equality in excess of 15 percent in 7 of the 117 House of

Representative Districts, and in which there are deviations from mathematical equality in excess of 10 percent in 29 (one quarter) of the 117 House of Representative Districts, similarly deny due process or equal protection of the law?

4. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which there are deviations from mathematical equality in excess of 14 percent in 6 of the 48 Senatorial Districts, and in which there are deviations from mathematical equality in excess of 10 percent in 12 (one quarter) of the 48 Senatorial Districts, similarly deny due process or equal protection of the law?

5. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which there is a pattern of under-representation for certain of the populous urban counties and over-representation for certain of the sparsely settled rural counties in both legislative houses, similarly deny due process or equal protection of the law?

6. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan containing the features described in the foregoing questions similarly deny due process or equal protection, when the District Court also had before it an apportionment plan jointly submitted by Appellant Swann and Appellant Supervisor at the specific invitation of the Court in which there was a maximum deviation from mathematical equality of only 1.95 percent in the House of Representatives and a maximum deviation from mathematical equality of only 3.35 percent in the Senate, and

in which all electoral districts were geographically contiguous and in which no county was divided?

7. Does the refusal of the District Court to declare unconstitutional and enjoin the enacted reapportionment plan in which three Senators are "grandfathered" or held over from the previous Senate while other Senators are not so "grandfathered" or held over, similarly deny due process or equal protection of the law?

8. Did the District Court err in according a greater presumption of validity to the plan enacted by the malapportioned and unconstitutional Legislature than to the plans submitted by Appellants?

9. Have the Appellants, or either of them, the legal standing to take this appeal?

STATEMENT OF THE CASE

The antecedent history of the cause is set forth in the Court's decision of February 25, 1966. *Swann v. Adams*, 382 U.S. 210 (R. 13-15). On February 26, 1966 the Governor of Florida issued a call convening a Special Session of the State Legislature on March 2, 1966 to consider reapportionment legislation. The Legislature that convened was apportioned in the manner found unconstitutional by this Court more than two years ago. *Swann v. Adams*, 378 U.S. 553. On February 28, 1966 the Appellants filed a joint petition (R. 16-35) asking the District Court to adopt and put into immediate effect the reapportionment plan previously submitted by the Appellants on July 6, 1965 at the District Court's express invitation. This plan incorporated the size requirements of

Section 2, Article VII of the Constitution of Florida which states:

> "The Legislature shall consist of not more than 32 members of the Senate and of not more than 68 members of the House of Representatives."[1]

The 32 Senator, 68 Representative plan urged by Appellants divided the State into 12 Senatorial districts or constituencies and 14 Representative districts or constituencies. Each district was composed of a single county or a group of contiguous counties. No county was divided under the plan, which incorporated the size limitations contained in the above quoted section of the Florida Constitution, the last valid constitutional size limitations of legal effect in Florida. The plan incorporated almost perfect voter equality with no Senate constituency deviating by more than 3.35 percent from absolute mathematical equality and no House constituency deviating by more than 1.95 percent. In the alternative, the joint petition asked the Court to decree that each member of the Florida Legislature called to convene in Special Session on March 2, 1966, be given a vote weighted in proportion to the number of people in the area from which he was elected,

---

[1] The above quoted section of the Florida Constitution has never been repealed. A later enacted section (containing provisions governing both size and apportionment) was declared wholly unconstitutional by the Supreme Court of Florida in an Advisory Opinion to the Governor appearing at 150 So.2d 721 (1963) because of the district court's apportionment opinion in *Sobel v. Adams*, 208 F.Supp. 316 (S.D. Fla. 1962). Thereafter the Supreme Court of Florida held that the above quoted section of the Florida Constitution limiting the size of the Legislature was not reactivated by the declaration of unconstitutionality of the superceding section governing both size and apportionment, and that there were now no constitutional size limitations on the State Legislature. *O'Neill v. Adams*, Fla., 176 So. 2d 903; *Jordan v. Green*, Fla., 173 So.2d 448.

as reflected in the 1960 decennial census, in order to compensate for the invalid apportionment of the Legislature (R. 17-18).

On March 1, 1966, the District Court deferred any hearing on the joint petition of Appellants on the ground that it was without jurisdiction until it received the mandate or judgment based on the Supreme Court's opinion of February 25, 1966 (R. 36).

On March 2, 1966, the Special Session of the Legislature commenced. This session represented the eighth time that an unconstitutionally apportioned legislature had met since this cause was instituted in March, 1962 (R. 89). Just before the Special Session began, the Attorney General of the State of Florida furnished each member of the Legislature with a document entitled "Criteria and Guidelines for Reapportionment as Established by Federal Courts." Therein he stated inter alia:

> "The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15 percent would be difficult to sustain as complying with 'one man-one vote.' It is therefore respectfully submitted that a percentage variation not exceed 15 percent." (R. 89-90).

On March 9, 1966, the Legislature enacted HB 17-X (66), Chapter 66-1, Laws of Florida (R. 44-56). This statute, as approved by the Governor on March 10, 1966, is printed herein as Appendix 2. Salient features of this enactment are the following:

(a) It provides for a Senate of 48 members, and a House of Represenatives of 117 members.

(b) In the House of Representatives certain rural counties are over-represented to the extent of 18.28 percent while certain urban counties are under-represented to the extent of 15.27 percent, a spread of 33.55 percent. There are deviations from mathematical equality in excess of 15 percent in seven of the House constituencies and in excess of 10 percent in 29 (one quarter) of the House constituencies.

(c) In the Senate certain rural counties are over-represented to the extent of 15.09 percent while certain urban counties are under-represented to the extent of 10.56 percent, a spread of 25.65 percent. There are deviations from mathematical equality in excess of 14 percent in six of the 48 Senatorial Districts, and in excess of 10 percent in 12 (one quarter) of the 48 Districts. Further, three Senators from unchanged Senatorial Districts are "grandfathered" or held over from the previous Senate, while other Senators similarly situated are not "grandfathered" or held over.

(d) There is a pattern of under-representation for certain of the populous urban counties and over-representation for certain of the more sparsely settled rural counties in both legislative houses.

On March 14, 1966, the Attorney General of the State of Florida moved the District Court to approve HB 17-X(66) (R. 41-60). On March 15, 1966, the Appellants submitted to the District Court a statistical analysis of HB 17-X(66) pointing out the extent of its

departures from mathematical equality (R. 73-76) and simultaneously a document entitled "Suggested Modifications to the Plan of Apportionment Contained in HB 17-X(66)." (R. 64-72). This latter document showed how the maximum deviations from equality in HB 17-X (66) could be reduced from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives by minor modifications and adjustments not affecting the overall structure of the apportionment plan adopted by the Legislature.

Oral argument was heard on March 15, 1966 (R. 87-106). The Attorney General urged the Court to sanction the apportionment plan contained in HB 17-X(66), while counsel for Appellants sought adoption of the joint plan calling for 32 Senators and 68 Representatives originally submitted to the Court on July 6, 1965, or in the alternative adoption of the suggested minor modifications and adjustments to HB 17-X(66) (R. 64-72).

On March 18, 1966, the District Court entered its opinion and order declaring HB 17-X(66) constitutional in all respects and refusing to enjoin its application (R. 77-79). It is this Order that the Appellants respectfully ask the Supreme Court to review and reverse following the Court's Order Noting Probable Jurisdiction on October 10, 1966 (R. 107).

Since the decision of the District Court, there have been two primary elections and November 8, 1966 there will be a general election for the purpose of selecting the state legislators in accordance with HB 17-X(66). The candidates chosen at the general election will take office immediately. The regular session of the Legislature com-

mences on the first Tuesday after the first Monday in April, 1967.

SUMMARY OF ARGUMENT

The standard of maximum voter equality laid down by the Court in *Reynolds v. Sims*, 377 U.S. 533, is being gradually subverted into a doctrine of maximum permissible deviation. In derogation of the Court's firm guidelines, some authorities have set the maximum permissible deviation at 15 percent, while Florida now seeks to extend this permissible deviation to 18 percent. The plan of apportionment enacted in Florida contains deviations from voter equality five times larger than those in the apportionment plan jointly submitted to the District Court by Appellants, contains a pattern of under-representation for certain urban counties and over-representation for certain rural counties, and "grandfathers" or holds over certain Senators with unexpired terms while requiring others to run for re-election. The plan of apportionment enacted is therefore discriminatory and violative of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

ARGUMENT

I

THE STANDARD OF MAXIMUM VOTER EQUALITY LAID DOWN BY THE COURT IS BEING GRADUALLY SUBVERTED INTO A DOCTRINE OF MAXIMUM PERMISSIBLE DEVIATION. IN SOME STATES THIS DEVIATION HAS BEEN SET AT 15 PERCENT.

FLORIDA NOW SEEKS TO EXTEND THIS MAXIMUM PERMISSIBLE DEVIATION FROM 15 TO 18 PERCENT, AND ADOPT AN APPORTIONMENT PLAN WITH DEVIATIONS FROM EQUALITY FIVE TIMES LARGER THAN THOSE IN THE PLAN SUBMITTED BY APPELLANTS.

On June 15, 1964, this Court in a series of opinions known as the *Reapportionment Cases*, 377 U.S. 533-765, established the standard for apportioning the houses of a state legislature. That standard was based on voter equality and was clearly stated in the following language:

> ". . . the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."
> (Reynolds v. Sims, 377 U.S. 533, 579)

> "Overweighting and over-valuation of the votes of those living here has the certain effect of dilution and under-valuation of those living there."
> (Reynolds v. Sims, 377 U.S. 533, 563)

> ". . . the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are

free from any taint of arbitrariness or discrimination."

(Roman v. Sincock, 377 U.S. 695, 710)

Since that date the federal district courts have been charged with the responsibility of bringing about the voter equality required by the due process and equal protection clauses and possibly by the clause guaranteeing a republican form of government to all states pursuant to Section 4 of Article IV of our Constitution.

However, the federal district courts have been reluctant to create plans of state legislative apportionment ab initio, without first giving the state legislatures an opportunity to reapportion themselves. They have called upon state legislatures, although invalidly composed, to reapportion themselves while they review the plans of apportionment enacted and determine whether those plans are compatible with federal constitutional requirements. Thus, the initiative in state legislative reapportionment has generally passed to the unconstitutionally composed state legislatures. These bodies, long dominated by sparsely populated rural counties, have generally approached the decisions of the Court with a view to seeing whether they can come within the legal requirements which the Court imposes and still retain the balance of political power in the agrarian sections of the state. The legislatures have thus approached the problem not with the question "In what way can we come closest to absolute voter equality?" uppermost in their minds but rather with the question "By how much can we deviate from absolute voter equality without rendering what we have enacted unconstitutional?" The doctrine of maximum voter equal-

ity articulated by this Court has thus been twisted and subverted into a different standard, the standard of "maximum permissible deviation."

This standard of "maximum permissible deviation" was originally mentioned as 15 percent in *Toombs v. Fortson*, 241 F.Supp. 65 (1965) when the District Court said:

> "We decline to set a mathematical formula to be followed but we do hold that a variance of more than 15 percent would be difficult, if not impossible, to justify. It may be that there will be some later elucidation by the Supreme Court on this complex question but until such event occurs, we will base any test as to the reasonableness of variances on the departure figure of 15 percent." (Page 70)

A similar standard was enunciated by *Yancey v. Faubus*, 251 F.Supp. 998 (1965), wherein the District Court stated:

> ". . . the authorities do suggest that a deviation of *not more than* 15 percent either way is tolerable." (Emphasis supplied)

In a recent case (as yet unreported) emanating from the U. S. District Court for the Eastern District of Louisiana styled *Bannister v. Davis* and filed on August 29, 1966, the Court stated:

> "In line with a number of cases, we adopt as a permissible standard 15 percent deviation from the ideal."

Thus, the 15 percent deviation which was originally designated as "a departure figure" subsequently became

"tolerable" and has now grown into "a permissible standard." The respectability of what the Appellants maintain to be an unconstitutional deviation is growing. As an example of this, see the statement of the Attorney General of Florida to the Florida Legislature, supra, page 8. Thus, a penumbra of acceptability with a temporarily defined outer limit of 15 percent was in the process of evolving.

However, in the instant case the District Court sanctioned an 18 percent deviation; perhaps in the next case involving reapportionment to come before the Court, a party will seek approval for a deviation of 20 percent. It should be noted that a differentiation between a district under-represented by 15 percent and a district over-represented by 15 percent is over 35 percent. In the apportionment plan enacted by the Legislature of Florida and under attack herein, the difference between the most over-represented and most under-represented constituencies in the Senate and House of Representatives are 30 percent and 41 percent respectively (See Appendix 11 and Appendix 14 in the Statement of Appellees Opposing Jurisdiction and Motion to Affirm).

The principle created by this Court is clear: The vote of any citizen must be "equal in weight to that of any other citizen in the State." *Reynolds v. Sims*, 377 U.S. 533. Certain other factors are relevant, though not overriding, such as the integrity of county lines, the contiguity of districts, and state constitutional requirements relating to the size of legislative houses. The Appellants recognize that these relevant factors will bring some deviation from mathematical exactness, but respectfully suggest that only such minimal deviations as necessity requires should be tolerated.

A plan was presented to the District Court by the Appellants on July 6, 1965 at the specific invitation of the Court. This plan satisfied all relevant non-population considerations and contained deviations from perfect equality of only 3.35 percent in one house and 1.95 percent in the other. This plan was before the Florida Legislature when it met in Special Session after this Court's decision of February 25, 1966. The plan was before the District Court for the second time when it issued its decision of March 18, 1966, herein appealed from. But the District Court rejected this plan and approved as "constitutional in all respects" a plan with deviations extending even beyond the *Toombs v. Fortson* "maximum permissible deviation" of 15 percent.

This appeal presents to the Court a unique opportunity to make clear that its *Reynolds v. Sims* standard must be followed, and to indicate that there is no maximum permissible deviation. Although the District Court had before it a plan which satisfied all relevant non-population considerations and deviated from perfect equality only minimally, it adopted a plan *with deviations 5 times as great* without explanation. Without a statement of such reasons, this Court is not even given the material which it requires to properly exercise its functions of judicial review.

II

EVEN IF THE COURT WERE PREPARED TO SUBSTITUTE A "MAXIMUM PERMISSIBLE DEVIATION" FOR "MAXIMUM VOTER EQUALITY," IT SHOULD NOT SANCTION AN EXTENTION OF THE DEVIATION FROM 15 TO 18 PERCENT.

Appellants submit that, even if the rule providing for a maximum permissible deviation of 15 percent declared in *Toombs v. Fortson*, 241 F.Supp. 65 (1965) were to be approved by this Court, the reapportionment plan contained in HB 17-X(66) as enacted by the Florida Legislature on March 9, 1966, would still be unconstitutional as beyond the bounds of that rule.

One of the clearest and most forthright statements of the legal requirements of a constitutional apportionment plan is to be found in the opinion of the District Court of December 23, 1965 (Appendix 1) where, in holding the plan enacted by the Legislature in June of 1965 unconstitutional, the Court said in attempting to lay down valid criteria for the guidance of a future legislature:

> "In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that 'both houses of a state legislature must be apportioned on a population basis,' and that the 'state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable.' Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506. *Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided.* We do not think it

can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D.Ga.1965, 241 F.Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so." (Emphasis supplied)

An abyss lies between these ringing words of the District Court and its sanction of the legislature's plan of apportionment in which the maximum deviation in the House of Representatives exceeds 18 percent, the maximum deviation in the Senate exceeds 15 percent, and the number of deviations in excess of 10 percent exceeds 25 percent of the number of seats in each legislative house. The legislative plan fails to meet even the constitutionally dubious tenets of *Toombs v. Fortson*, 241 F.Supp. 65 (1965).

Nor can it be argued that the departures from mathematical equality contained in the legislative enactment represented "only such minimal departures as necessity demands." These departures are neither minimal nor demanded by necessity. This is demonstrated by the joint plan of the Appellants in which there was a maximum deviation of only 3.35 percent in one house and 1.95 percent in the other house. It was also demonstrated by the fact that Appellants were able to reduce the maximum deviations in the plan enacted by the Legislature from 15.1 percent to 10.6 percent in the Senate and from 18.3 percent to 11 percent in the House of Representatives, with only slight adjustments and without affecting the basic structure of the plan.

III

THE "GRANDFATHERING" OR HOLDING OVER OF CERTAIN SENATORS WITH UNEXPIRED TERMS WHILE OTHER SIMILARLY SITUATED SENATORS ARE NOT HELD OVER IS NOT COMPATIBLE WITH THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

In the legislative plan enacted on March 9, 1966 three Senators were "grandfathered" in or held over from the previous Senate.[2] These three Senators were from constituencies that were unchanged geographically from those existing in the previous apportionment plan. There were three other Senators who were not "grandfathered" in, whose terms had not expired under the previous apportionment plan and whose constituencies remained geographically unchanged under the newly enacted plan. Retaining some Senators and not retaining others similarly situated is a violation of the equal protection of the laws clause of the Fourteenth Amendment. This difference in treatment was not part of a considered plan of staggered elections. It was ad hoc personal legislation. It denied to the voters of those Senatorial Districts whose Senators were "grandfathered" the right to elect possessed by all other Florida voters.

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[2] These were the Senators from Orange, Palm Beach and Polk Counties.

IV

THE PATTERN WHEREBY CERTAIN URBAN COUNTIES ARE UNDER-REPRESENTED AND CERTAIN RURAL COUNTIES ARE OVER-REPRESENTED IS DISCRIMINATORY AND UNCONSTITUTIONAL.

There is a pattern of under-representation for certain of the urban counties and over-representation for some of the rural counties in both legislative houses as constituted under HB 17-X(66). This is shown by basic facts that cannot be disputed. Although the opinion of the District Court under review ignored the discrimination, the Appellants respectfully submit that:

(a) The only counties in the Senate under-represented by 10 percent or more are two large urban counties. These are Duval County which includes the city of Jacksonville, and Palm Beach County which includes the cities of West Palm Beach and Palm Beach. These two counties are by population the second and seventh largest in Florida, and together contain almost three-quarters of a million persons.

(b) In the House of Representatives, there are 13 members who are to be elected from constituencies under-represented by 10 percent or more. Of these 13, 10 will represent essentially urban areas. These include Orange County, which contains the city of Orlando, and Polk County, which contains

the city of Lakeland. These two counties are by population the sixth and eighth largest in Florida, and have a combined population in excess of 450,000 persons.

(c) Urban Palm Beach County, with a population of over a quarter of a million persons, is seriously under-represented in both legislative houses. This County is under-represented by 10.6 percent in the Senate, as has been previously pointed out; in addition, the County will be under-represented by 7.8 percent in the House of Represenatives. See *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, in which the Court said:

> ". . . disparities from population-based representation, though minor, may be cumulative instead of off-setting where the same areas are disadvantaged in both houses of a state legislature, and may therefore r e n d e r the apportionment scheme at least constitutionally suspect."

(d) Of the 20 counties which are over-represented in the House of Representatives by 10 percent or more, 19 are rural in character[3] and only one, Brevard County which includes the Cape Kennedy complex and the surrounding cities and towns, is urban.

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[3] These 19 counties are: Holmes, Walton, Washington, Jefferson, Dixie, Taylor, Levy, Gilchrist, Putnam, Alachua, Union, Bradford, Clay, Flagler, St. Johns, Lake, Seminole, Pasco, and Manatee.

(e) There are three counties which are over-represented by 10 percent or more in both legislative houses. The three counties are Walton and Holmes Counties which are both over-represented by 15.1 percent in the Senate and 11 percent in the House, and Washington County, over-represented by 14.4 percent in the Senate and 11 percent in the House. All three of these counties are rural, with Walton County, having a population of just over 15,000 persons, being the largest of the three. See *Lucas v. Forty-Fourth General Assembly, supra.*

(f) There are two rural counties heavily over-represented in the overall picture. Manatee County, an essentially rural county on Florida's west coast, is over-represented by 18.3 percent in the House of Representatives and 7.2 percent in the Senate. In addition, rural Gulf County, with a population of under 10,000, is over-represented by 14.4 percent in the Senate and 8.9 percent in the House of Representatives.

These instances manifest a pattern of discrimination against urban areas. No single urban county is over-represented in both houses, while at least five rural counties are. The District Court's abrupt dismissal of the issue on the ground that HB 17-X(66) did "not discriminate *to any great extent* (Emphasis supplied) against any section of the state or against either rural or urban interests" is its own proof of error.

V

THERE SHOULD BE NO GREATER PRESUMPTION OF VALIDITY ATTACHING TO A REAPPORTIONMENT PLAN ENACTED BY AN INVALIDLY AND UNCONSTITUTIONALLY COMPOSED STATE LEGISLATURE THAN TO ANY OTHER PLAN SUBMITTED TO A COURT FOR CONSIDERATION.

The District Court obviously attached a presumption of validity to the plan enacted by the Legislature as HB 17-X(66). Only by resort to such a presumption can the District Court's rejection of both the joint plan submitted by Appellants and of the modifications alternatively suggested by Appellants to HB 17-X(66) be explained. Why else accept the Legislature's plan in totality despite the much closer adherence to the "one-man, one-vote" principle of the joint plan or proposed modifications submitted by Appellants? No other explanations or justifications for the wider deviations contained in HB 17-X(66) were offered to the District Court or stated by it.

Appellants respectfully submit that indulgence in such a presumption in the circumstances of this case was error. HB 17-X(66) was *not* adopted by a constitutional legislature; it was adopted by a legislature illegally apportioned in accordance with a 1963 plan declared unconstitutional by this Court on June 22, 1964. *Swann v. Adams*, 378 U.S. 553. This Court may well consider whether a malapportioned legislature, meeting almost two years after the declaration of its unconstitutionality,

could enact apportionment legislation entitled to any presumption of validity.[4]

In the last analysis, it is not the source of the plan, but the merits of the plan itself, which must determine its constitutionality. In this case, the District Court had before it essentially three alternatives:

(1) A plan which afforded equality of voting rights to all voters in Florida within a maximum variation of only 3.35 percent;

(2) A plan which discriminated between such voters by as much as 18.3 percent and;

(3) A plan by which the deviations contained in HB 17-X(66) could be reduced from 18.3 percent to 11 percent without interference with its basic structure.

Appellants submit that the District Court abused its discretion when it approved the plan with the greatest deviation on the sole basis of a presumption of validity attaching to the product of a malapportioned, unconstitutional legislature making its eighth attempt. Deviations to the extent contained in HB 17-X(66) could be sustained, if ever, only on a clear showing of necessity derived from

[4] The character of the Legislature which enacted HB 17-X(66) is illustrated by its enactment of legislation by a substantial majority, despite the opposition of virtually all urban representatives, permitting small rural counties to permanently freeze the present allocation of certain tax revenues among the counties by bonding them for many decades into the future. This was done despite the Legislature's being specially convened to deal solely with reapportionment. The Governor of Florida, chosen through an electoral process in which all voters have votes of equal weight, vetoed this enactment.

some special non-discriminatory, unavoidable circumstance. It should not be here sustained in mere deference to a legislature which in no sense represented the people of the State on a fair and equal basis.

VI

THE APPELLANTS HAVE THE LEGAL STANDING TO PROSECUTE THIS APPEAL.

Both Appellees' motions to dismiss or affirm contended that the Appellants, who are situated in Dade County, had no standing for appellate purposes to challenge the District Court's ruling, since Dade County has virtually equal representation in the House of Representatives and an under-representation of only 5.9 percent in the Senate. Though it is true that there are many counties under or over represented in the legislature to a far greater extent than Dade, Appellants nonetheless believe their standing is clear for the following reasons:

a) Appellant Swann seeks relief not only as a voter of Dade County, but as an urban voter of the State of Florida. If urban Dade County were over-represented as an individual county in the legislature while urban counties as a whole were under-represented in that legislature, Appellant Swann would be discriminated against and denied equal protection under the Fourteenth Amendment as an urban voter of Florida. If Dade County, with approximately 20 percent of the state's population, were hypothetically given 25 percent of the representation in the Florida Legislature while the remaining 75 percent of the representation was assigned wholly to rural counties, the voters of Dade County and Appellant Swann

would be prejudiced and denied equal protection under the law as urban voters of Florida, despite Dade County's individual over-representation in both legislative houses. Every voter in the State of Florida and every voter in Dade County is constitutionally entitled to a properly apportioned legislature, and this entitlement was declared to be an individual personal right by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 at 736, 12 L.Ed.2d 632, 84 S.Ct. 1472. Thus, the fundamental individual rights of Appellants have been abridged by the malapportionment enacted into law and sanctioned by the District Court; they are denied equal protection under the law as urban voters and therefore possess standing to prosecute this appeal. See also the note appearing at 79 Harv. L.Rev. 1226 where at page 1251 it is stated:

> "In the general confusion that has plagued the lower courts in applying these three tests, the primary fact that the courts have neglected to consider is the Supreme Court's holding in *Reynolds* that specific individuals in malapportioned states were being deprived of the equal protection of the laws. *Reynolds* leaves no doubt that the Supreme Court majority has decided that equitable apportionment is a personal right."

b) The District Court, since the institution of this case in 1962, has followed a uniform policy of denying all motions to intervene as a party in the cause, including such motions from residents of counties in many parts of the State, other than Dade County. Since it was therefore impossible for a plaintiff from any other county in the State to protest against HB 17-X(66), Appellants addressed the Court on the general issue of constitutional-

ity on behalf of all the voters of the State of Florida. This is made clear in the transcript of the argument:

"JUDGE JONES: Dade County is not unhappy with its own situation?

MR. BRITTON: Not in the sligh[t]est, your Honor. Under that program, in the House there is a disproportion of over five percent which we think to be totally needless. But, certainly, not invidiously discriminatory under any decision of the Court.

JUDGE JONES: And Dade County is just motivated by higher moral principles in wanting everybody else in the state to be as well treated as it has been.

MR. BRITTON: The interest is more selfish, your Honor, than that. I know of no reason why a citizen of Polk County could not come in after this Court adopts the legislature's plan and attack it in another Court proceeding. If it did, this case which had its beginning four years ago, would be prolonged perhaps for another year needlessly.

Apart from that selfish interest that I feel as a citizen here and I believe my fellow citizens feel, I do feel that it is our responsibility before you to urge the correct, the sound, the proper legal solution to you regardless of which way it affects us.

JUDGE JONES: Well, do not misunderstand me. I was not critical. I just want to get your position clear." (R. 94)

By reason of the District Court's action in denying any intervention, Appellants are perforce the representatives of all Florida voters. It is therefore their duty and their right to assert and protect the interest of all Florida voters, including those resident in Dade County.

c) Although this is designated as a new appeal, it is but a continuation of the two prior appeals in which this Court ruled favorably to Appellants. Appellants are seeking enforcement of the two prior opinions and judgments entered by this Court in their favor; they have standing to maintain this appeal on that ground alone.

d) Under the plan jointly proposed and submitted to the District Court by Appellants, Dade County was under-represented by 0.71 percent in the Senate and over-represented by 1.22 percent in the House of Representatives. Under HB 17-X(66) Dade County is under-represented by 5.9 percent in the Senate and by 0.4 percent in the House. The voters of Dade County and Appellant Swann are therefore under-represented to a greater extent under HB 17-X(66) than they would be under the joint plan proposed by Appellants. On this basis also, they have the legal standing to maintain this appeal.

CONCLUSION

For the reasons stated, this Court should reverse the order of the District Court of March 18, 1966, accepting the plan of apportionment enacted by the Legislature of

Florida on March 9, 1966. The Appellants respectfully request that the cause be remanded to the District Court with instructions to that Court to order into effect the joint plan submitted by the Appellants to the District Court.

Respectfully submitted,

THOMAS C. BRITTON
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida 33130

STUART SIMON
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant
Supervisor of Elections
of Dade County, Florida

D. P. S. PAUL

P. D. THOMSON
Paul & Sams
1314 First National Bank Building
Miami, Florida 33131

NEAL RUTLEDGE
Rutledge & Milledge
111 N. E. First Street
Miami, Florida 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida 33128

Attorneys for Appellant
Richard H. M. Swann

APPENDICES

APPENDIX 1

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators,

whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of

17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county

lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that

the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will do so so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Tombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted re-

apportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX 2

HB 17-X(66)
Final Passage
3/9/1966

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District — Escambia and Santa Rosa counties.

Second District — Escambia and Santa Rosa counties.

Third District — Okaloosa, Walton and Holmes counties.

Fourth District — Bay, Washington and Gulf counties.

Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District — Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District — Duval county.

Tenth District — Duval county.

Eleventh District — Pinellas county.

Twelfth District — Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District — Dade and Monroe counties.

Fourteenth District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District — Dade and Monroe counties.

Eighteenth District — Duval county.

Nineteenth District — Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District — Orange county.

Twenty-First District — Hillsborough county.

Twenty-Second District — Hillsborough county.

Twenty-Third District — Hillsborough county.

Twenty-Fourth District — Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District — Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District — Polk county.

Twenty-Seventh District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District — DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District — Pinellas county.

Thirtieth District — Broward county.

Thirty-First District — Duval county.

Thirty-Second District — Pinellas county.

Thirty-Third District — Palm Beach county.

Thirty-Fourth District — Hillsborough county.

Thirty-Fifth District — Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District — Orange county.

Thirty-Seventh District — Brevard county.

Thirty-Eighth District — Pinellas county.

Thirty-Ninth District — Broward county.

Fortieth District — Dade and Monroe counties.

Forty-First District — Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District — Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the secretary of state as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District — Dade and Monroe counties.

Forty-Fourth District — Dade and Monroe counties.

Forty-Fifth District — Dade and Monroe counties.

Forty-Sixth District — Dade and Monroe counties.

Forty-Seventh District — Dade and Monroe counties.

Forty-Eighth District — Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2

Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake County and one member shall be a resident of Seminole county and the other representative shall be a resident of either county;

provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by

law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

Office-Supreme Court, U.S.
FILED
NOV 21 1966
JOHN F. DAVIS, CLERK

No. 136

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida

BRIEF OF APPELLEES

EARL FAIRCLOTH
Attorney General

EDWARD D. COWART
Assistant Attorney General

W. E. BISHOP, JR.
Assistant Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 136

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida

---

BRIEF OF APPELLEES

OPINIONS BELOW

The opinion and order appealed from entered on March 18, 1966, by the United States District Court for the Southern District of Florida are unreported, wherein the District Court ruled that House Bill 17-X (66) met Federal constitutional standards and was accepted by the Court as the standard to be used in selecting members by the 1967 session of the Florida legislature. This opinion and order are printed herein as Appendix A.

Earlier opinions and orders in this case are:

(a) *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla. 1962).

(b) *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla. 1963).

(c) *Swann v. Adams*, 378 U.S. 553, 12 L. Ed. 2d 1033, 84 Sup. Ct. 1904 (1964).

(d) *Swann v. Adams*, No. 186-62-M-CIVIL-DD (S.D. Fla. 1965).

Listed herein as Appendix B.

(e) *Swann v. Adams*, 383 U.S. 210, 15 L. Ed. 2d 707, 86 Sup. Ct. 767 (1966). Listed herein as Appendix C.

STATEMENT OF JURISDICTION

This Appellee accepts the Appellants' Statement of Jurisdiction as listed on pages 2-3 of their Brief.

STATUTES INVOLVED

The constitutionality of H.B. 17-X (66), Chapter 66-1, Laws of Florida. This enactment is printed herein as Appendix D.

QUESTIONS PRESENTED

I. Does the approval of House Bill 17-X (66), Chapter 66-1, Laws of Florida, by the lower Court constitute an abuse of discretion vested in said Court, absent an affirmative showing that said plan is invidiously discriminatory?

II. Do the Appellants have any further legal standing to maintain this appeal where they have not shown that they have been harmed by the ruling of the lower Court?

III. Does the "grandfathering" or holding over of certain Senators with unexpired terms while other similarly situated Senators, by their own choice, were not held over, comply with the equal protection of the law clause of the Fourteenth Amendment?

SUMMARY OF ARGUMENT

The approval of House Bill 17-X (66) by the lower court does not constitute an abuse of discretion vested in said court, since there is a complete absence of any affirmative showing by the Appellants that said plan is invidiously discriminatory. The Appellants do not have any further legal standing to maintain their appeal when they have not shown that they have been harmed by the ruling of the lower court. This is particularly true since the Appellants originally filed their complaints as voters of Dade County and the new plan shows very little deviation with respect to Dade County. The "grandfathering" or holding over of certain Senators with unexpired terms, while other similarly situated Senators, by their own choice, were not held over complies with the equal protection of the law clause of the Fourteenth Amendment to the Federal Constitution.

STATEMENT OF THE CASE

On February 25, 1966, this Court entered its opinion and order reversing the District Court's order of December 23, 1966,

which held, inter alia, that the reapportionment of the state of Florida under House Bill 19-XX (65), although unconstitutional, would be accepted as an interim plan until sixty days after the adjournment of the 1967 regular session of the Florida Legislature. *Swann v. Adams*, 383 U.S. 210, 15 L.Ed.2d 707, 86 Sup.Ct. 767 (1966) (Appendix C). This Court in reversing and remanding the case to the District Court, made the following instructions:

> "We reverse and remand to the District Court so that a valid reapportionment plan will be effective for the 1966 elections."

Although the 25 day period for the issuance of the Court's mandate had not expired, the Governor of Florida on the following day, February 26, 1966, issued a call convening a Special Session of the State Legislature to commence March 2, 1966, to reconsider reapportionment legislation in line with the Court's ruling.

On February 28, 1966, the Appellants filed a joint petition asking the District Court to adopt and put into immediate effect the reapportionment plan previously submitted by the Appellants on July 6, 1965 (R. 16-35).

On March 1, 1966, the lower court deferred hearing the Appellants' joint petition before-mentioned for the reason that the mandate of the Supreme Court had not issued on its Order dated February 25, 1966 (R. 36).

Although not part of the official transcript of record but found in this Court's file, the Appellees by their attorney advised the clerk that the Appellees would not file a petition for rehearing on the Order of February 25, 1966, and requested the issuance of judgment in order to expedite valid reapportionment. On the same date of March 2, 1966, the Special Session of the State Legislature convened to consider reapportionment legislation.

On March 7, 1966, a certified copy of this Court's judgment was filed in the District Court (R. 37-38), and on March 8, 1966, the District Court set hearing on March 15, 1966, of all matters pending and undisposed of in the above styled cause (R. 39).

On March 9, 1966, two days subsequent to the filing of this Court's Judgment in the District Court, the Special Session of the State Legislature enacted H.B. 17-X (66), Chapter 66-1, Laws of Florida, which was signed into law by the Governor of Florida on March 10, 1966 (R. 44-56). Pertinent features of this enactment are as follows:

(1) It provides for a bicameral legislature of 48 senators and 117 representatives.

(2) The maximum population variance ratio in the reapportioned Senate of Florida is 1.30 to 1. 48.61 per cent of the population elect 50 per cent of the Senate. The average population per Senator is 103,158. The smallest senatorial district is 87,847 and the largest is 114,053, or a maximum population variance ratio of 1.30 to 1 (Appendix E-1).

(3) The maximum population variance ratio in the reapportioned House of Representatives is 1.41 to 1. 50.43 per cent of the population elect 50.43 per cent of the House of Representatives. The average population per member is 42,321. The smallest representative district is 34,584, and the largest is 48,785, or a maximum population variance ratio of 1.41 to 1 (Appendix E-2).

(4) With respect to the percentile variation, only one senatorial district exceeds 15 per cent with a maximum of 15.09 per cent under average variation (Appendix E-1). In the House, an analysis of the variation indicates that three house districts exceed 15 per cent, with a maximum variance of 18.28 per cent under average variation. The three districts in the House make

up a relatively small number totalling 7 members of the 117 member House of Representatives.

On March 14, 1966, this Appellee moved the District Court to approve and adopt H.B. 17-X (66), Chapter 66-1, Laws of Florida, as meeting the Supreme Court's standards for valid reapportionment of the state of Florida (R. 41-42).

On March 15, 1966, hearing was held on all pending matters and oral argument and exhibits were presented by counsel for the Appellants and the Appellees (R. 87-106).

On March 18, 1966, the District Court entered its opinion and order declaring H.B. 17-X (66) constitutional and refused to enjoin its application (R. 77-79). In this Order the Court adjudged the following:

> "The plan of apportionment of the Florida legislature, as found in H.B. 17-X (66), enacted in March, 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida legislature." (R. 79)

It is from this order that the Appellants are now before this Court requesting that it take jurisdiction over this matter and are assailing the provisions of H.B. 17-X (66) as being unconstitutional.

Since the decision of the District Court there have been two primary elections in which candidates have qualified and been elected as representative members of their respective parties and there has been a general election for the purpose of selecting state legislators in accordance with H.B. 17-X (66). The candidates that have been chosen at the general election are now officially in office. The regular session of the newly constituted legislature in accordance with H.B. 17-X (66) will

commence on the first Tuesday after the first Monday in April, 1967.

The Appellees are confident that the arguments presented herein will demonstrate that the lower Court did not abuse its discretion in approving H.B. 17-X (66) and that the Appellants have not been harmed in any way and have no further standing in this cause.

I

DOES THE APPROVAL OF HOUSE BILL 17-X (66), CHAPTER 66-1, LAWS OF FLORIDA, BY THE LOWER COURT CONSTITUTE AN ABUSE OF DISCRETION VESTED IN SAID COURT, ABSENT AN AFFIRMATIVE SHOWING THAT SAID PLAN IS INVIDIOUSLY DISCRIMINATORY?

This Court in a multitude of reapportionment cases that have been before it has furnished guidelines for a lower court in reviewing a state reapportionment statute succinctly stated as follows:

". . . (A)n individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a *substantial fashion* diluted when compared with votes of citizens living in other parts of the State." *Reynolds v Sims*, 377 U.S. 533, 568. (Emphasis added.)

"So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportion-

ment of seats in either or both of the two houses of a bicameral state legislature."
Reynolds v Sims, 377 U.S. 533, 579.

". . . (T)he proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." *Roman v Sincock*, 377 U.S. 695, 710.

"We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds v Sims*, 377 U.S. 533, 577 (footnote omitted).

These Appellees respectfully submit that the foregoing language when read in the context of the opinions from which it is taken with the applicable principles in establishing guidelines for the placing of the burden of proof in reapportionment cases, in those instances where a statute has been passed with the express purpose of complying with the requirements of the equal protection clause, will show that the following standards are applicable:

1. The attacker must prove that the weight of an individual's vote for state Legislators when compared with votes of individuals living in other parts of the state has been diluted in a substantial fashion.

2. The attacker would clearly have to prove a substantial dilution to the point of being invidiousness per se.

3. In the absence of proof of being invidiousness per se, there must be shown divergences from a strict population standard that are not based on any legitimate consideration incident to the effectuation of a rational state policy.

4. The attacker must show that certain minor deviations to be impermissible would have to be based upon arbitrary and discriminatory reasons, based on factors which could not be justified on a rational ground.

The Appellants contend primarily that the reapportionment act of the State of Florida is invalid due to the fact that it contains deviations which in the Appellant's mind exceed "maximum permissive deviation" for maximum voter equality. It is urged that the Legislature of the State of Florida in enacting HB 17-X was knowledgeable of the exising reapportionment facts of Florida and enacted a reapportionment plan promoting the interest of the people as a whole, and which act the Court should not lightly declare unconstitutional. See *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U.S. 96, 104, 43 L.Ed. 909, 19 Sup.Ct. 609 (1899); *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1966).

It is respectfully submitted that the function of this Honorable Court is to gauge the validity of the apportionment plan approved below, whether or not the Legislature might have made a better or wiser choice is not a justiciable question to be urged in this appeal. The concern of the Federal Constitution is not what might have been done but that which actually was done. See *Sincock v. Roman*, 233 F.Supp., 615, 61 (D.Del. 1964); *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1966); *Dunglin v. Sawyer*, 253 F.Supp. 352 (D.Nev. 1966).

There seems to be little argument that certain deviation is permissible to justify disparities from population-based representation on the effectuation of a rational state policy. The

integrity of various politicl subdivisions, districts of contiguous territories with a common interest, all appear to be reasons for disparities.

The Appellees do not urge that both houses of a state legislature need not be apportioned on a population basis. However, it is respectfully submitted that where a state makes an honest and good faith effort to construct districts in both houses of its legislature as nerly as equal in population as practical, absent a showing of pure invidious discrimination, the plan should not be discared.

This Honorable Court and many Federal District Courts reviewing reapportionment problems have considered and determined that whea here is no showing that a plan is invidious per se, the movant nust clearly show that the plan is one that would otherwise derive the complaining party of constitutional standards, sucl as partisan gerrymandering, racial discrimination and the distgard for natural or political boundaries. There is no such cotention made in the case at bar. The Appellants allege onlythat there has been a plan devised by the Florida Legislature o discriminate against urban communities of the State of Floria.

It is respectfly submitted by the Appellees that the following chart willshow that no such discrimination was practiced.

HOUSE DISTRICTS

Variance: Under 5%	% of State Population	Counties
(1) + 2.68	3.51	Escambia
(2) + 3.09	.73	Jackson
	.15	Calhoun
(3) + 1.67	1.50	Leon
	.11	Wakulla
	.13	Franklin
(4) — 2.17	9.20	Duval
(5) — 0.81	.19	Citrus
	.23	Hernando
	1.04	Marion
	.24	Sumter
(6) — 1.29	2.53	Volusia
(7) + 4.44	8.03	Hillsborough
(8) — 1.64	7.57	Pinellas
(9) + 3.92	.51	Indian River
	.34	Martin
	.13	Okeechobee
	.79	St. Lucie
(10) — 1.37	6.74	Broward
(11) + 0.43	18.88	Dade
Total % of State Popul. (Under 5% Var.)	62.55%	

HOUSE DISTRICTS

Variance: 5%-10%	% of State Population	Counties
(1) — 8.95	1.36	Bay
	.20	Gulf
(2) + 7.18	1.24	Okaloosa
	.60	Santa Rosa
(3) + 6.63	.85	Gadsden
	.06	Liberty
(4) — 6.17	.16	Hamilton
	.30	Suwannee
	.29	Madison
	.06	Lafayette
(5) + 5.45	.35	Nassau
	.15	Baker
	.41	Columbia
(6) + 7.25	.24	DeSoto
	.25	Hardee
	.43	Highlands
(7) — 9.15	1.55	Sarasota
(8) + 7.80	4.61	Palm Beach
Total % of State Popul. (5%-10% Var.)	13.11%	

HOUSE DISTRICTS

Variance 10%-15%	% of State Population	Counties
(1) — 10.99	.22	Holmes
	.31	Walton
	.23	Washington
(2) — 11.26	.19	Jefferson
	.09	Dixie
	.27	Taylor
	.21	Levy
(3) — 14.03	.06	Gilchrist
	.65	Putnam
	1.50	Alachua
(4) — 10.15	.12	Union
	.25	Bradford
	.39	Clay
(5) — 11.53	1.16	Lake
	1.11	Seminole
(6) — 13.08	.74	Pasco
(7) — 12.23	2.25	Brevard
(8) + 11.28	5.32	Orange
	.38	Osceola
(9) + 11.00	.25	Charlotte
	.32	Collier
	.06	Glades
	.16	Hendry
	1.10	Lee
(10) + 13.23	.97	Monroe
Total % of State Popul. (10%-15% Var.)	18.31%	

HOUSE DISTRICTS

Variance Over 15%	% of State Population	Counties
(1) — 18.24	.09	Flagler
	.61	St. Johns
(2) — 18.28	1.40	Manatee
(3) + 15.27	3.94	Polk
Total % of State Popul. (Over 15% Var.)	6.04%	

HOUSE DISTRICTS

Total % of State Popul. Under	5%	62.55%
Total % of State Popul.	5%-10%	13.11%
Total % of State Popul.	10%-15%	18.31%
Total % of State Popul. Over	15%	6.04%
		100.01%

SENATE DISTRICTS

Variance Under 5%	% of State Population	Counties
(1) — 1.46	3.51	Escambia
	.60	Santa Rosa
(2) — 0.15	.61	St. Johns
	.09	Flagler
	2.53	Volusia
	1.11	Seminole
	1.16	Lake
	.38	Osceola
	.24	Sumter
	1.04	Marion
	.19	Citrus
	.23	Hernando
	.74	Pasco
(3) — 3.60	8.03	Hillsborough
Total % of State Popul. (Under 5% Var.)	20.46%	

SENATE DISTRICTS

Variance 5%-10%	% of State Population	Counties
(1) + 7.57	.73	Jackson
	.15	Calhoun
	.85	Gadsden
	.06	Liberty
	.13	Franklin
	.11	Wakulla
	1.50	Leon
	.19	Jefferson
	.29	Madison
	.27	Taylor
	.09	Dixie
	.06	Lafayette
	.30	Suwannee
	.16	Hamilton
	.41	Columbia
	.06	Gilchrist
	.21	Levy
	1.50	Alachua
	.65	Putnam
	.39	Clay
	.12	Union
	.25	Bradford
	.15	Baker
	.35	Nassau
(2) + 8.02	2.25	Brevard
(3) — 9.20	7.57	Pinellas
(4) — 7.20	1.40	Manatee
	1.55	Sarasota
	.25	Hardee
	.24	DeSoto
	.43	Highlands
(5) — 5.42	3.94	Polk

(6)	— 8.92	.25	Charlotte
		.06	Glades
		.16	Hendry
		1.10	Lee
		.32	Collier
(7)	+ 7.91	6.74	Broward
(8)	+ 5.88	18.88	Dade
		.97	Monroe
	Total % of State Popul. (5%-10% Var.)	55.09%	

SENATE DISTRICTS

Variance 10%-15%		% of State Population	Counties
(1)	— 14.39	.23	Washington
		1.36	Bay
		.20	Gulf
(2)	+ 10.37	9.20	Duval
(3)	— 14.84	5.32	Orange
(4)	— 14.73	.51	Indian River
		.13	Okeechobee
		.79	St. Lucie
		.34	Martin
(5)	+ 10.56	4.61	Palm Beach
	Total % of State Popul. (10%-15% Var.)	22.69%	

SENATE DISTRICTS

Variance Over 15%	% of State Population	Counties
(1) — 15.09	1.24	Okaloosa
	.31	Walton
	.22	Holmes
Total % of State Popul. (Over 15% Var.)	1.77%	

SENATE DISTRICTS

Total % of State Population Under	5%	20.46%
Total % of State Population	5%-10%	55.09%
Total % of State Population	10%-15%	22.69%
Total % of State Population Over	15%	1.77%
		100.01%

The foregoing analysis is graphically demonstrative that the Legislature of Florida was based purely on the population criteria. As this Court stated, the Legislators are elected by voters, not farms or cities or economic interests. See *Reynolds v. Sims*, 377 U.S. 533, 580, 12 L.Ed.2d 506, 84 Sup.Ct. 1362 (1964).

The real criteria by which one man's vote can be measured against another is what voice that vote has in the election of the total legislative membership. This standard seems readily apparent in an analysis of the various reapportionment cases decided by the state and federal courts in examining the individual state plans as shown below:

COLORADO

SENATE: Maximum population variance ratio—1.46 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—1.73 to 1
45.4% of the population elect a majority

In *Lucas v. Forty-Fourth General Assembly*, 232 F.Supp. 797 (D.Colo. 1964) the Court approved the legislative plan. The decision was affirmed as to the federal questions in *Forty-Fourth General Assembly v. Lucas*, 379 U.S. 693, 13 L.Ed.2d 699, 85 Sup.Ct. 715 (1966). Previously, in *Lucas v. Colorado General Assembly*, 377 U.S. 713, 12 L.Ed.2d 632, 84 Sup.Ct. 1472 (1964) this Honorable Court, referring to the Colorado House Districts in which there was a maximum population variance ratio of 1.7 to 1, stated:

> ". . . Initially, one house of the Colorado Legislature is at least arguably apportioned substantially on a population basis. . . ." 377 U.S. 713, 730.

GEORGIA

SENATE: Maximum population variance ratio—1.81 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—2.003 to 1
42.341% of the population elect a majority

In *Toombs v. Fortson*, 241 F.Supp. 65 (N.D.Ga. 1965), the Court approved this legislative plan on an interim basis until May 1, 1968. This was affirmed in *Toombs v. Fortson*, 384 U.S. 210, 16 L.Ed.2d 482, 86 Sup.Ct. 1464 (1966). After the decision in *Swann v. Adams* on February 25, 1966, the Court shortened the time to May 1, 1967. See *Toombs v. Fortson*, Civil No. 7,883 (N.D.Ga. 1966).

MONTANA

SENATE: Maximum population variance ratio—1.45 to 1
46.8% of the population elect a majority

HOUSE: Maximum population variance ratio—1.66 to 1
47.9% of the population elect a majority

In *Herweg v. Thirty-Ninth Legislative Assembly*, 246 F. Supp. 454 (D.Mont. 1965) the Court provided an apportionment scheme for both houses of the Legislature.

NEVADA

SENATE: Maximum population variance ratio—1.47 to 1
49.7% of the population elect a majority

HOUSE: Maximum population variance ratio—1.53 to 1
46.8% of the population elect a majority

In *Dungan v. Sawyer*, 253 F.Supp. 352, (D.Nev. 1966) the Court approved the legislative plan.

TENNESSEE

SENATE: Maximum population variance ratio—1.38 to 1
48.38% of the population elect a majority

HOUSE: Maximum population variance ratio—1.51 to 1
46.36% of the population elect a majority

In *Baker v. Carr*, 247 F.Supp. 629 (M.D.Tenn. 1965) the Court approved the legislative reapportionment of both houses.

UTAH

SENATE: Maximum population variance ratio—1.74 to 1
44.5% of the population elect a majority

HOUSE: Maximum population variance ratio—1.55 to 1
47.7% of the population elect a majority

In *Petuskey v. Rampton*, 243 F.Supp. 365 (D.Utah 1965) the Court approved the legislative plan which under-represented the five (5) largest counties in both houses.

VERMONT

SENATE: Maximum population variance ratio—1.60 to 1
48.8% of the population elect a majority

HOUSE: Maximum population variance ratio—1.30 to 1
48.7% of the population elect a majority

In *Buckley v. Hoff*, 243 F.Supp. 873 (D.Vt. 1965) the Court approved the legislative plan.

VIRGINIA

SENATE: Maximum population variance ratio—1.37 to 1
48.2% of the population elect a majority

HOUSE: Maximum population variance ratio—1.53 to 1
48.2% of the population elect a majority

The legislative plan of reapportionment for both houses was upheld in *Mann v. Davis*, 245 F.Supp. 241 (E.D.Va. 1965) aff. *Burnette v. Davis*, 382 U.S. 42, 15 L.Ed.2d 35, 86 Sup.Ct. 181 (1965).

WASHINGTON

SENATE: Maximum population variance ratio—1.45 to 1
47.6% of the population elect a majority

HOUSE: Maximum population variance ratio—1.62 to 1
46.7% of the population elect a majority

In the unreported decision of *Thigpen v. Kramer*, Civil No. 5,597 (W.D.Wash. 1965) the Court approved the legislative plan of apportionment.

WISCONSIN

SENATE: Maximum population variance ratio—1.36 to 1
48.4% of the population elect a majority

HOUSE: Maximum population variance ratio—2.35 to 1
45.4% of the population elect a majority

The Wisconsin Supreme Court in *State v. Zimmerman*, 128 N.W.2d 16 (1964) provided a reapportionment scheme for both houses of the state legislature.

WYOMING

SENATE: Maximum population variance ratio—2.08 to 1
44.0% of the population elect a majority

HOUSE: Maximum population variance ratio—2.59 to 1
48.0% of the population elect a majority

The Court upheld the apportionment of the House in *Schaefer v. Thomson*, 240 F.Supp. 247 (D.Wyoming 1964). In *Schaefer v. Thomson*, 251 F.Supp. 450 (D.Wyoming 1965) the Court provided an apportionment scheme for the Senate. This decision was affirmed per curiam in *Harrison v. Schaefer*, 383 U.S. 269, 15 L.Ed.2d 750, 86 Sup.Ct. 929 (1966).

(The statistical information for Colorado, Virginia and Washington were not found in the Court opinions but were furnished these Appellees by the Attorney General of these respective states. The statistical information for the Georgia reapportionment scheme is found in the unreported decision of March 21, 1966. The statistical information given on the reap-

portionment plans of the remaining states is either set out in the respective opinions or is a computation from facts set forth in those opinions.)

It is thus apparent that the entire plan of reapportionment is to be considered as to whether or not a legislative reapportionment plan will meet constitutional muster, not mere mathematical deviations which are subject to subjective analysis.

The Florida Legislature followed in most instances the Congressional boundaries for the election and districting of members of the House of Representatives in Florida and there simply is no showing before this Court by the argument made in the Appellant's brief that this is an invalid, illegal or unconstitutional standard from which the pattern of reapportionment in Florida has been cut. The Appellees feel that it cannot be substantively shown that the overall scheme of reapportionment in Florida is clothed and tainted with arbitrariness or discrimination, but that the Legislature of Florida enacted a reapportionment plan that has faithfully adhered to a population based representation with such minor deviations only as may occur in recognizing Congressional District boundaries and contiguousness.

In the Florida House plan 50.43% of the people of the State of Florida elect 50.43% of the House of Representatives. This is a total population variance ratio of 1.41 to 1. In the Senate plan 48.61% of the people of the State of Florida elect 50% of the Senate. This is a total population variance ratio of 1.30 to 1.

It has been contended by amicus curiae that political and racial elements will be effectively disenfranchised by HB 17-X in that the votes of residents of small counties will be substantially diluted. It has been repeatedly held that there is no right per se for a political group or a minority group to elect one of their number and a statute will not be held unconstitutional in the absence of a showing that the act was so drawn in order

to prevent the opportunity to elect one of their number. Appellees respectfully submit that there has been no such showing. See *Wright v. Rockefeller* 376 U.S. 52, 11 L.Ed.2d 512, 84 Sup. Ct. 603 (1964); *Mann v. Davis*, 245 F.Supp. 241 (E.D.Tenn. 1965) aff. *Burnette v. Davis* 382 U.S. 42, 15 L.Ed.2d 35, 86 Sup.Ct. 181 (1966).

It is therefore respectfully submitted that the Legislative plan of Florida complies with the mandates, directions and guidelines, that have been recognized by this Court and Three-Judge Federal Courts in arriving at constitutional reapportionment throughout the nation.

II

DO THE APPELLANTS HAVE ANY FURTHER LEGAL STANDING TO MAINTAIN THIS APPEAL WHERE THEY HAVE NOT SHOWN THAT THEY HAVE BEEN HARMED BY THE RULING OF THE LOWER COURT?

Your Appellees respectfully submit that this question is a prime issue in this cause and should be answered in the negative.

There is a fundamental rule of law that no person may seek the aid of the courts, state or federal, to rule upon a question unless such a person has a direct, immediate, or personal interest to be preserved. The remaining Appellants in this cause have maintained their position in this suit because they had presented a class action for themselves and other persons similarly situated in Dade County, Florida. Your Appellees respectfully submit to the Court that further analysis of House Bill 17-X (66) would indicate that in the Senate plan the variation in the Senatorial Districts affecting Dade County reveal that there is a 5.88% variation in over-representation. In the House of Representatives the plan is more nearly perfect in that

there is only 0.43% variation from an average representation. Your Appellees submit that there has been no showing that there has been any harm done to the Appellants or other similarly situated voters in Dade County.

The rule that a person may not seek the aid of the judiciary to rule upon a question unless the person has a direct, immediate and personal interest to be served or there is a showing that such person will be harmed has been applied in reapportionment cases. [See *Stout v. Bottorff*, 246 F.Supp. 825 (S.D.Ind. 1965) wherein a resident of Marion County, and a member of the Senate of the 94th General Assembly of Indiana, was without standing to assert that the 1965 Apportionment Act was invalid because it diluted votes of some residents of other parts of the state, where he made no complaint of debasement of his vote or those of Marion County voters generally.]

The Appellees concede that the Appellants had standing in this case prior to these proceedings because they had demonstrated to the courts the unconstitutionality of apportionment of the State of Florida as it applied to them as residents of Dade County; but there is another fundamental rule concerning "standing" which provides that with respect to appellate jurisdiction every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment sought to be appealed.

> "It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. *The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the*

judgment or decree sought to be appealed from, he cannot appeal." (Emphasis supplied)

(*Hamilton Trust Co. v. Cornucopia Mines Co.*, 223 F. 494, 499 (CCA 9th 1915) cert. den. 239 US 641, 60 L.Ed. 482, 36 Sup.Ct. 161 (1915).

"The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. * * *

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. * * *"

(*Sperry-Rand Corp. v. Bell Telephone Laboratories, Inc.*, 317 F.2d 491, 493 (CCA 2d 1963).

In considering the foregoing cases and the analysis of House Bill 17-X (66) with respect to the position of the Appellants and other persons similarly situated in Dade County, it is obvious that the Appellants no longer have standing or an interest in the decision that they seek to have reviewed by this Court.

III

DOES THE "GRANDFATHERING" OR HOLDING OVER OF CERTAIN SENATORS WITH UNEXPIRED TERMS WHILE OTHER SIMILARLY SITUATED SENATORS, BY THEIR OWN CHOICE, WERE NOT HELD OVER, COMPLY WITH THE EQUAL PROTECTION

OF THE LAW CLAUSE OF THE 14th AMENDMENT?

Your Appellees submit that the above question is more comprehensive than that propounded by the Appellants in their brief and should be answered in the affirmative.

The Appellants in their brief have stated under question III that three senators were grandfathered in or held over from the previous Senate. These were the Senators from Orange, Palm Beach and Polk counties. These three Senators were from constituencies that were unchanged geographically from those existing in the previous reapportionment plan. The Appellants also allude to the fact that there were three other Senators who were not grandfathered in and whose terms had not expired under the previous apportionment plan and whose constituencies remained geographically unchanged in the newly enacted plan.

Your Appellees submit, however, that the Appellants omitted the fact that they had knowledge, or should have had knowledge, that the three Senators who were not grandfathered in were left out as a matter of their own choice. This is demonstrated by remarks of counsel for the Appellees at pages 101-102 of the Transcript of Record:

> "As far as the grandfather clauses and positions themselves, there is no grandfathering in these bills except in those senatorial districts where their constituencies have remained identical.
>
> "It is true that some of these senators were not grandfathered in and we respectfully submit that this was by choice of individual senators and it does not and should not, we feel, lessen the position that it is in and of itself not invidiously discriminatory. For there were odd numbered senators who were elected by the peo-

ple in their districts, in their particular districts, to serve a four year term and they are only completing those particular terms in those districts where the individual senator's constituency has not changed." (TR. 101-102)

Your Appellees respectfully submit that this Court has approved the "grandfathering" of legislators who are in a district where the constituency remains the same and whose normal elected term has not expired. See *Toombs v. Fortson*, 241 F. Supp. 65 (N.D. Ga. 1965) aff. 384 U.S. 210, 16 L.Ed.2d 482, 86 Sup.Ct. 1464 (1966).

This further gives rise to the legal proposition that the Appellants have shown that they have not been harmed by this legislative action by grandfathering or not grandfathering the three Senators, since Appellants are not constituents of any of the Senators involved in this enactment.

Your Appellees further submit that there has been no display of invidious discrimination in this respect and there is no violation of the equal protection of the law clause of the Fourteenth Amendment.

CONCLUSION

The Appellees respectfully submit that there has not been demonstrated in this appeal any abuse of discretion committed by the lower court, since the Appellants have completely failed to show that the minor deviations present in the plan are tainted with arbitrariness or any invidious discrimination in House Bill 17-X; and that the Appellants do not have any further legal standing to maintain this appeal; and the grandfathering or holding over of certain Senators with unexpired terms while other similarly situated Senators by their own choice, were not held over, complies with the equal protection of the law clause of the

Fourteenth Amendment to the Constitution of the United States.

Accordingly the decision of the lower court should be affirmed.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

EDWARD D. COWART
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

APPENDICES

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical

exactness or precision is not required, of course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30 : 1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majority of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41 : 1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA, Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

WARREN L. JONES

United States Circuit Judge

WILLIAM A. McRAE, JR.

United States District Judge

DAVID W. DYER

United States District Judge

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more

senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose

of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been

drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "State make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed as applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an in-

terim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX C

SUPREME COURT OF THE UNITED STATES

SWANN et al. v. ADAMS et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973. Decided February 25, 1966.

PER CURIAM.

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims* . . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART would affirm the judgment.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

APPENDIX D

Chapter 66-1

HOUSE BILL 17-X

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District—Escambia and Santa Rosa counties.

Second District—Escambia and Santa Rosa counties.

Third District—Okaloosa, Walton and Holmes counties.

Fourth District—Bay, Washington and Gulf counties.

Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District—Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District—Duval county.

Tenth District—Duval county.

Eleventh District—Pinellas county.

Twelfth District—Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District—Dade and Monroe counties.

Fourteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District—Dade and Monroe counties.

Eighteenth District—Duval county.

Nineteenth District—Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District—Orange county.

Twenty-First District—Hillsborough county.

Twenty-Second District—Hillsborough county.

Twenty-Third District—Hillsborough county.

Twenty-Fourth District—Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District—Polk county.

Twenty-Seventh District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District—Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the Secretary of State as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of the state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3

Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6
Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake county and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under Chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX E-1

48 Senatorial Districts

Maximum Population—Variance Ratio of 1.30 to 1

48.61% of the Population elects 50% of the Senate

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
1,2	Escambia & Santa Rosa	2	203,376	101,688	1.46	
3	Okaloosa, Walton & Holmes	1	87,595	87,595	15.09	
4	Washington, Bay & Gulf	1	88,317	88,317	14.39	
5,6,8,25	Jackson, Calhoun, Gadsden, Liberty, Franklin, Wakulla, Leon, Jefferson,					

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
	Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker & Nassau	4	443,885	110,971		7.57
9,10,18,31	Duval	4	455,411	113,853		10.37
14,15,16, 41	St. Johns, Flagler, Volusia, Seminole, Lake, Osceola, Sumter, Marion, Citrus, Hernando, & Pasco	4	412,021	103,005	0.15	
19,20,36	Orange	3	263,540	87,847	14.84	
37	Brevard	1	111,435	111,435		8.02
11,29,32, 38	Pinellas	4	374,665	93,666	9.20	

App. 22

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
21,22,23, 34	Hillsborough	4	397,788	99,447	3.60	
27,28	Manatee, Sarasota, Hardee, DeSoto, & Highlands	2	191,454	95,727	7.20	
7,26	Polk	2	195,139	97,570	5.42	
12	Indian River, Okeechobee, St. Lucie & Martin	1	87,959	87,959	14.73	
24	Charlotte, Glades, Hendry, Lee & Collier	1	93,955	93,955	8.92	
33,35	Palm Beach	2	228,106	114,053		10.56
30,39,48	Broward	3	333,946	111,315		7.91
13,17,40, 42,43,44, 45,46,47	Dade & Monroe	9	982,968	109,219		5.88
		48	4,951,560			

APPENDIX E-2

117 Representatives

Average per Representative, 42,321. Maximum Population-Variance Ratio of 1.41 to 1, 50.43% of the Population elects 50.43% of the House.

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per Cent Variation	
				Under Aver.	Over Aver.
Bay and Gulf	2	77,068	38,534	8.95	
Escambia	4	173,829	43,457		2.68
Holmes, Walton and Washington	1	37,669	37,669	10.99	
Okaloosa and Santa Rosa	2	90,722	45,361		7.18
Jackson and Calhoun	1	43,630	43,630		3.09
Gadsden and Liberty	1	45,127	45,127		6.63
Leon, Wakulla, Franklin	2	86,058	43,029		1.67

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Jefferson, Dixie Taylor, Levy	1	37,554	37,554	11.27	
Hamilton, Suwannee, Madison, Lafayette	1	39,709	39,709	6.17	
Gilchrist, Putnam, Alachua	3	109,154	36,385	14.03	
Union, Bradford, Clay	1	38,024	38,024	10.15	
Nassau, Baker Columbia	1	44,629	44,629		5.45
Duval	11	455,411	41,401	2.17	
Citrus, Hernando, Marion, Sumter	2	83,958	41,979	0.81	
Flagler, St. Johns	1	34,600	34,600	18.24	
Lake, Seminole	3	112,330	37,443	11.53	
Pasco	1	36,785	36,785	13.08	
Volusia	3	125,319	41,773	1.29	
Brevard	3	111,435	37,145	12.23	
Orange, Osceola	6	282,569	47,095		11.28

Counties	No. of Rep.	Total Pop.	Aver. Pop per Rep.	Per cent Variation	
				Under Aver.	Over Aver.
Hillsborough	9	397,788	44,199		4.44
DeSoto, Hardee, Highlands	1	45,391	45,391		7.25
Manatee	2	69,168	34,584	18.28	
Polk	4	195,139	48,785		15.27
Sarasota	2	76,895	38,448	9.15	
Pinellas	9	374,665	41,629	1.64	
Charlotte, Collier, Glades, Hendry, Lee	2	93,955	46,978		11.00
Indian River, Martin, Okeechobee, St. Lucie	2	87,959	43,980		3.92
Palm Beach	5	228,106	45,621		7.80
Broward	8	333,946	41,743	1.37	
Dade	22	935,047	42,502		0.43
Monroe	1	47,921	47,921		13.23
	117	4,951,560			

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 136

RICHARD H. M. SWANN and SUPERVISOR OF ELECTIONS of Dade County, Florida,

Appellants,

versus

TOM ADAMS, Secretary of State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

On Appeal from the United States District Court, Southern District of Florida.

BRIEF OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA.

LEO L. FOSTER,
JOHN A. MADIGAN, JR.,
SEYMOUR H. ROWLAND, JR.,
PARKER, FOSTER & MADIGAN,
Brock Building—Post Office Box 669,
Tallahassee, Florida,
Attorneys for W. B. Freeman,
Supervisor of Elections of
Monroe County, Florida, Appellee.

PAUL E. SAWYER, ESQUIRE,
County Attorney,
Post Office Box 571,
Key West, Florida,
Attorney for W. B. Freeman,
Supervisor of Elections of
Monroe County, Florida,
Appellee.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

No. 136.

RICHARD H. M. SWANN and SUPERVISOR OF ELECTIONS of Dade County, Florida,

Appellants,

versus

TOM ADAMS, Secretary of State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

On Appeal from the United States District Court, Southern District of Florida.

BRIEF OF APPELLEE, W. B. FREEMAN, SUPERVISOR OF REGISTRATION OF MONROE COUNTY, FLORIDA.

OPINIONS BELOW.

The opinion and order appealed from, which were entered on March 18, 1966 by the United States District

Court for the Southern District of Florida, are unreported. They appear in the Record at pages 77-79. Earlier opinions in this cause are:

(i) *Sobel v. Adams, 208 F.Supp. 316 (S. D. Fla., 1962);*

(ii) *Sobel v. Adams, 214 F.Supp. 811 (S. D. Fla., 1963);*

(iii) *Swann v. Adams, 378 U.S. 553;*

(iv) *Swann v. Adams, unreported (S. D. Fla., December 23, 1965);*

(v) *Swann v. Adams, 382 U.S. 210.*

This opinion appears in the Record at pages 13-14.

STATEMENT OF THE CASE.

The history of this case is set out in detail in this Court's decision in *Swann v. Adams,* 382 U.S. 210, entered on February 25, 1966.

On February 26, 1966, the Governor of Florida called the Legislature into Special Session, which Special Session convened on March 2, 1966, for the purpose of reapportionment.

On February 28, 1966, the Appellants filed a petition asking the District Court to adopt and put into immediate effect a reapportionment plan which had been prepared by the Appellants, which plan was based on

portions of *Section 2, Article VII of the Florida Constitution* which have been declared void and inoperative. *Jordan v. Green*, 173 So.2d 448.

On March 1, 1966, the District Court deferred any hearing on the Appellants' petition on the ground that the District Court was without jurisdiction until it received the United States Supreme Court's mandate on its opinion dated February 25, 1966 (R. 36).

On March 2, 1966, the Special Session commenced. To aid the Special Session in its deliberations, the Attorney General of the State of Florida prepared and furnished to the Legislature a document styled "Criteria and Guidelines for Reapportionment as Established by the Federal Courts" (R. 89-90). In addition to the paragraph quoted on page 8 of the Appellants' brief, the guidelines provided:

"1. A Majority of the people must be able to elect a majority of the Legislature.

"2. Membership in both houses must be apportioned on a population basis.

"3. Consideration of areas, economic interest or political subdivisions standing alone do not provide valid criteria for apportionment but a combination of these factors may be used so long as population is a major consideration. Under no circumstances may these or any other factors be used except on the basis of a rational or reasonable plan of apportionment.

"4. Neither mathematical exactitude nor a rigid and uniform formula is required, but each plan must be reviewed on its own merits and any deviation from population must be justified.

"5. The 1960 federal census must be the criteria for determining the population of a county.

"6. * * *"

On March 9, 1966, the Legislature enacted HB 17-X(66), Chapter 66-1, Laws of Florida (R. 44-56), which statute was approved by the Governor on March 10, 1966.

On March 14, 1966, the Attorney General of the State of Florida moved the District Court to approve HB 17-X(66) (R. 41-60), and on March 15, 1966, the Appellants filed certain documents attacking the statute and suggesting modifications (R. 64-72).

Oral argument was held on March 15, 1966 (R. 87-106). At this time the Attorney General urged the Court to approve HB 17-X(66) without change. The Appellants sought to have the court adopt a plan they had originally submitted July 6, 1965, calling for 32 senators and 68 representatives, (R. 19-32) or in the alternative, the adoption of the Appellants' "Suggested Modifications to the Plan of Apportionment Contained in HB 17-X(66)" (R. 64-72).

On March 18, 1966, the District Court entered its opinion and order holding HB 17-X(66) constitutional (R. 77-79).

On March 25, 1966, the Appellants herein filed separate notices of appeal directed to the District Court's order of March 18, 1966 (R. 80-86).

On October 10, 1966, this Court entered its order noting probable jurisdiction (R. 107).

SUMMARY OF THE ARGUMENT.

Neither of the Appellants have legal standing to prosecute this appeal. The Appellant Swann did not file this action as a class action but only as a resident and qualified voter of Dade County, Florida, and he now admits that he, as a voter in Dade County, Florida, is no longer invidiously discriminated against.

The Appellant Supervisor of Elections of Dade County, Florida, a party only in his official capacity as Supervisor, holds an administrative office created by the Legislature having only ministerial functions, and therefore, cannot question the constitutional validity of the Florida Reapportionment Act, HB 17-X(66).

The present plan of reapportionment in Florida meets the standard of maximum voter equality enunciated in *Reynolds v. Sims*, 377 U.S. 533, and in enacting this plan the Legislature did not adopt a so-called rule styled by the Appellant as the doctrine of maximum permissible deviation. Moreover, the plans submitted by the Appellants invidiously discriminate against the less populous areas of the state.

ARGUMENT.

I.

The Appellants Do Not Have Standing To Maintain This Appeal.

The Appellee, W. B. Freeman, Supervisor of Registration of Monroe County, Florida, has thoroughly briefed this first point on page 4 to page 15 of his prior brief which was filed herein on or about June 8, 1966, in support of the said Appellee's motion to dismiss or to affirm, and the Appellee hereby adopts the arguments made and the authorities cited in that brief as if fully set out and incorporated in this brief.

The Appellants in their brief on the merits attempt to ignore this question by contenting themselves with an argument that might be summarized by the statement that they have standing because they have standing. The argument attempted by the Appellants on this point is made entirely on behalf of the Appellant Swann. No attempt is made to offer argument in justification of the right of the Appellant Supervisor of Registration of Dade County to prosecute this appeal.

On pages 25 and 26 of their brief on the merits, the Appellants prefaced their argument with several hypothetical factual situations setting out what would be the situation had Dade County been discriminated against in the present plan of reapportionment. Since the facts upon which these hypotheticals are based do not exist,

the conclusions the Appellants draw from them are not material to any issue in this case.

The Appellant Swann contends that he brought this action as a voter in Dade County and as an urban voter of the State of Florida. His complaint shows instead that he brought the action in his capacity as a qualified voter of Dade County, Florida, seeking to have his vote counted equally with those of other voters. Appellant admits that he has achieved this aim under HB 17-X(66). Thus he no longer has any legal standing to complain.

Appellant Swann now also insists that he somehow represents all the urban voters in Florida. Appellee is aware that the Appellant likes to consider his actions in this cause in such a light, but it is extremely doubtful whether Appellant's zeal is so viewed by a majority of those residing outside of Dade County. It is also doubtful whether the Appellant's definition of an urban voter would comport with the definition of that term by many of the voters residing outside of Dade County, Florida.

In support of the argument under this point, the Appellants cite the decision of this Court in *Lucas v. Colorado General Assembly*, 377 U. S. 713 at page 736.

The Appellee believes the Appellants misconstrue the meaning of certain language used in that case. That case held that an individual had a right to cast an equally weighted vote, which right could not be denied by the vote of a majority of the state's electorate.

"* * * An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. * * * . . . 'One's right to life, liberty, and property . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.' A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. * * *"

(Lucas v. Colorado General Assembly, 377 U.S. 713, 736-737.)

The existence of an individual and constitutionally protected right to seek relief in regard to a malapportioned Legislature does not overcome all other considerations with respect to *standing*, *rightness*, or *mootness* or all other rules governing appellate procedure or the right to appellate review. The Appellee suggests that the present Appellants are in the same position as Appellant Grills in *Stout v. Bottorff*, 246 F.Supp. 825 at page 828, and should be accorded the same treatment.

"Before turning to the principal issue, we decide two subordinate questions. First, plaintiff Grills, a resident of Marion County and a member of the Senate of the Ninety-fourth General Assembly, is without standing in this phase of the proceedings to assert that the 1965 Act is invalid because it dilutes the votes of some residents of the state. He

makes no complaint of debasement of his vote or those of Marion County voters generally, and we see no merit in his claim that as an elected state senator he has standing to assert in this proceeding at this time a right to serve in a constitutionally-apportioned General Assembly."

(Stout v. Bottorff, 246 F.Supp. 825, 828.)

II.

HB 17-X(66) Enacted By The Florida Legislature On March 9, 1966, Complies With The Standard Of Voter Equality Enunciated By The Supreme Court Of The United States In The REAPPORTIONMENT Cases.

The Appellee Freeman adopts the argument and authorities set forth on pages 15 through 28 of his prior brief filed herein on or about June 8, 1966, in support of the said Appellee's motion to dismiss or to affirm, as if fully set out and incorporated in this brief. However, the Appellee would like to supplement that brief with the following additional arguments.

(A) The Appellants claim that the Florida Legislature adopted a maximum permissible deviation rule and then extended its limits from 15% to 18%. This claim is based on the existence in only two representative districts of deviations of 18% (R. 68), despite the fact that deviations between the largest and smallest districts create a ratio 1.30:1 in the senate districts and 1.41:1 in the house districts (R. 41; 78).

The Appellants also argue loudly that they have offered a plan to the Federal District Court which, they say, satisfies all non-population considerations and deviates only 3.35% in one house and 1. 95% in the other. (See Appellants' brief on the merits on page 16.)

The Appellants do not explain what these non-population considerations are or how they have been satisfied, but a review of this plan (R. 19-32) reveals the rankest kind of gerrymandering designed to put what the Appellants describe as urban areas into complete control of the Legislature without giving any considerations to factors other than population.

To demonstrate how completely the Appellants have disregarded relevant factors other than population, the Appellee would first point to the treatment accorded Monroe County, Florida.

In the Senate the Appellants would create District K composed of the counties of Palm Beach, population 228,106, Broward, population 333,946, Collier, population 15,753 and Monroe, population 47,921 (R. 23) and allot this district four senators, each of whom would represent 156,432 persons. In the House, the Appellants would create District M composed of the counties of Hendry, population 8,719, Collier, population 15,753, and Monroe, population 47,921 (R. 30), and allot this district one representative. In both the Senate and the House, the Appellants designate Dade County as a separate district.

The Appellants insist that this plan provides a minimum of deviation from the standpoint of mathematical exactness. Whether this contention is true or not really has no meaning for once consideration is given to factors other than mathematical preciseness, the plan grows ridiculous and the motive of the draftsman becomes all too apparent.

The Appellants may as well join Monroe County with Duval County, which is some 300 miles distant, or with any other county in the state if Monroe is to be joined with Palm Beach, Broward or Collier County. A casual observer just glancing at a map might gain the momentary impression that Monroe is physically linked to Collier. Geographically this is true, but anyone who makes a more careful study of the map, or is as familiar with the area as the Appellants should be, soon discovers that this geographical link means nothing. In fact, the Appellee believes this Court may take judicial notice that the portion of Monroe County joining Collier County is a part of the Everglades National Park and inhabited by alligators and other denizens of the swamps who, like pine trees, do not vote.

When the population spread in the various counties grouped together by the Appellant, as indicated above, is considered it is apparent that the member of the House in District M would probably come from Monroe, and that all of the senators in District K would come either from Palm Beach County or Broward County. In any case, a citizen in Monroe desiring to meet with his senator or a citizen in Hendry County or Collier County

desiring to meet with his representative in these suggested districts would have to drive through Dade County, fly over it, or take a boat around it. There are no regularly established roads or other means of transportation or communication in that portion of Monroe County lying in the Everglades and bordering Collier County on the south.

The inhabited or populated portions of Monroe County, Florida, as the Appellants should know, lie entirely in that narrow chain of keys extending from the southeastern corner of Dade County in a west, southwesterly direction to the City of Key West, and the only road in or out of the keys is U.S. Highway No. 1 through Dade County, Florida.

Geographically and economically or from any other standpoint, the interests of the people of Monroe County should not be divorced or treated separately from those of Dade County, and the Legislature took cognizance of this when it devised HB 17-X(66), the present reapportionment plan, the only plan that can give some representation to Monroe County on a reasonable and rational basis while still complying with the standards set by this Court in *Reynolds v. Sims*, 317 U.S. 533.

HB 17-X(66) creates Senate District 42 composed of all of Monroe County and 18 precincts of Southern Dade County, which immediately join Monroe County on the north, having a total population of 103,025 which gives a deviation of only -.13 underrepresented from exact mathematical equality. It creates a representa-

tive district comprised of Monroe County alone having a total population of 47,921 which gives a deviation of only -.13.2 underrepresented from exact mathematical equality (R. 69, 76). Moreover, the Appellants recognize the fairness of this provision in HB 17-X(66) for in their suggested modifications to this Act, they recommended that these provisions remain unchanged (R. 65, 69).

The Appellants throughout the plan they propose have employed a pattern of discrimination against the less populous counties in Florida in both houses of the Legislature. In each instance, without regard to any factor other than population, the Appellants group a number of the less populous counties to one or more of the more populous counties taking care always in this grouping that the members to be elected to either house will of necessity come from the more populous counties.

The Appellants during this litigation have continually raised their voices in righteous indignation at the supposed injustice done to the urban areas through the alleged control of the Legislature by the less populous areas, but it disturbs them not at all to offer a suggestion that this same degree of control be transferred and placed absolutely in the hands of representatives of the few heavily populated areas of the State.

(B) The Appellants contend that there is a pattern of under representation for certain urban counties and over representation for certain rural counties in both houses of the Legislature.

The Appellee has answered this argument in his prior brief filed herein on or about June 8, 1966, in sup-

port of the Appellee's motion to dismiss or to affirm, and the Appellee hereby adopts the argument and authorities cited in that brief, but the Appellee would like to supplement that brief with a few comments specifically directed at the factors Appellants list on pages 20 through 22 of their brief on the merits, which factors the Appellants contend indicate a pattern of discrimination in HB 17-X(66).

In paragraph (a) on page 20, the Appellant contends that Duval and Palm Beach counties, two of the most heavily populated in the state, are under represented in the Senate, but when the Appellants filed their suggested modification to the plan of apportionment contained in HB 17-X(66) they recommended that the District Court leave the portions of HB 17-X(66) relating to these two counties unchanged (R. 65-66).

In paragraph (c) on page 21 of their brief, the Appellant again notes that Palm Beach County is under represented in the Senate by more than 10% and under represented in the House by more than 7%. Yet again in that suggested modification to HB 17-X(66) the Appellants recommended to the District Court that these portions of the act relating to Palm Beach County remain unchanged (R. 66, 69).

In paragraph (f) on page 22 of their brief, the Appellants note that Manatee County is over represented by 18.3% in the House and 7.2% in the Senate, and that Gulf County is over represented by 14% in the Senate and 8.9% in the House. The suggested modification the Appellants submitted to the District Court would

reduce Manatee's representation from 18.3% to 3.7% in the House (R. 68). However, the Appellants' modification would increase Manatee's over representation in the Senate from 7.2% to 9.8% (R. 66). Gulf County's representation in the Senate would be reduced from 15.4% to 8.7% (R. 64), but there would be no change in the House (R. 67).

Finally, in the last paragraph on page 22 of their brief, the Appellants remark that no single urban county is over represented in both houses. This is simply not so, but the assertion graphically points up the fallacy of accepting the Appellants' terminology at face value. From all the Appellee can gather, density of population is the only factor used by the Appellants to determine what is rural and what is urban. Using these terms in the sense of density it can be shown that Volusia County is an urban county and is over represented in both houses (R. 66, 68). Yet if the Appellants' suggested modification to HB 17-X(66) were adopted Volusia County's over representation would be increased in the Senate still more and left unchanged in the House.

The Appellants place all their emphasis on an assumed distinction to be made between rural and urban areas of the state, based entirely on population figures now almost seven years old, without once trying fully to define these terms. The Appellee could just as logically contend, and does so contend, that Alachua County with a population of 74,074 in 1960 (the home of Gainesville and the University of Florida) and Manatee County with a population of 69,168 in 1960 (the home of the Cities of Bradenton and Palmetto) are

urban counties. Both counties have large urban populations and both are in fast growing areas of the state. On page 21 of their brief, the Appellants list 19 counties they would consider rural in character, which includes Alachua and Manatee. Yet they do not list, for example, Bay and Lee Counties as rural though both of these last mentioned counties have smaller populations than either Alachua or Manatee.

As the District Court noted in one of the prior opinions in the case of *Sobel v. Adams*, 208 F.Supp. 316 at page 324, whether an area is urban or rural often depends upon the point of view. Some areas cannot be classified definitely as urban or rural but have attributes of both. With this statement, the Appellee agrees, and submits that the Appellants are now merly juggling figures with the primary aim of gathering as much legislative power to Dade County as can be accomplished without requiring Dade County to be responsible for or to any of the surrounding counties.

The Appellee submits that the only pattern discernible in HB 17-X(66) is the total absence of a discriminatory pattern. Instead, the reapportionment plan manifests a good faith effort on the part of the Florida Legislature which complies with both the letter and spirit of the case of *Reynolds v. Sims, supra.*

CONCLUSION.

The members of the Legislature who adopted the reapportionment plan here in question were experienced legislators with real knowledge of the state's problems and were citizens who had submitted themselves to

the voters of the state and have been chosen to speak for the voters even though coming from malapportioned districts. On the other hand, the Appellee can see no evidence in the Appellants' efforts or in their background that is indicative of any special legislative ability. Therefore, the Appellee again respectfully submits that the Appellants have no standing to maintain this appeal, that the Appellants have not and cannot show that the present plan of apportionment set forth in HB 17-X(66) fails to meet the standard of voter equality enunciated by this Court in the *Reapportionment* Cases, 377 U.S. 533-765, and the decision of the lower court should be affirmed.

.....

LEO L. FOSTER,
JOHN A. MADIGAN, JR.,
SEYMOUR H. ROWLAND, JR.,
PARKER, FOSTER & MADIGAN,
Brock Building,
Post Office Box 669,
Tallahassee, Florida,
Attorneys for W. B. Freeman, Supervisor of Elections of Monroe County, Florida, Appellee.

PAUL E. SAWYER, ESQUIRE,
County Attorney,
Post Office Box 571,
Key West, Florida.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

On Appeal from the United States District Court,
Southern District of Florida

REPLY BRIEF OF APPELLANTS

THOMAS C. BRITTON
1626 Dade County Courthouse
Miami, Florida, 33130

STUART SIMON
1626 Dade County Courthouse
Miami, Florida, 33130

Attorneys for Appellant
Supervisor of Elections of Dade
County, Florida

D.P.S. PAUL
1314 First National Bank Building
Miami, Florida, 33131

P. D. THOMSON
1314 First National Bank Building
Miami, Florida, 33131

NEAL RUTLEDGE
111 N. E. First Street
Miami, Florida, 33131

RICHARD F. WOLFSON
316 North Miami Avenue
Miami, Florida

Attorneys for Apellant
Richard H. M. Swann

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ARGUMENT

I

APPELLEES' ARGUMENT THAT THE FLORIDA LEGISLATURE'S REAPPORTIONMENT PLAN IS NOT "INVIDIOUSLY DISCRIMINATORY" SEEKS TO IMPOSE THE MAXIMUM PERMISSIBLE DEVIATION DOCTRINE THROUGH ACCORDING A PRESUMPTION OF VALIDITY TO THE DISCRIMINATORY REAPPORTIONMENT PLAN OF A MALAPPORTIONED LEGISLATURE

The gravamen of Appellees'[1] argument is that the Florida Legislature's plan of apportionment (House Bill 17-X (66)), while discriminatory to the extent of 1.41 to 1 in one house of the Legislature and 1.30 to 1 in the other house, is not sufficiently discriminatory to be "invidious per se" (Appellees' Brief, pp. 8-10), and is thus within the outer limits of constitutional permissiveness. This position runs counter to the rule laid down by this Court in the Reapportionment Cases that, under the Equal Protection Clause of the Fourteenth Amendment, all persons are to have votes of equal weight with only such minimal deviations from mathematical equality as necessity requires. The District Court in this case had before it at least three alternatives:

(1) Appellants' plan which afforded equality of voting rights to all voters of Florida within

[1]Unless otherwise stated, references to "Appellees" and "Appellees' Brief" refer to those Appellees represented by the Attorney General of the State of Florida and to the Brief of the Attorney General.

a maximum variation of only 3.35 percent and a maximum differential of 1.058 to 1.

(2) The legislative plan which contained a maximum deviation from voter equality of 18.3 percent and a maximum differential of 1.41 to 1.

(3) An alternative plan submitted by Appellants which reduced the maximum deviation from voter equality in the legislative plan from 18.3 percent to 11 percent and the maximum differential from 1.41 to 1.23 to 1, without any change in the basic structure of the plan.

The District Court sanctioned the plan with the largest deviations from voter equality in flat contradiction of this Court's rule and without any statement of reason why. The reason, Appellants must assume, lies in the presumption of validity accorded legislative enactments.

One recent case specifically rejecting Appellees' position and approving that of Appellants' is *Maryland Citizens Committee For Fair Congressional Redistricting, Inc. v. Tawes*, 253 F. Supp. 731 (1966). *Tawes* involved a plan of congressional districting. The Court stated (pp. 733-4):

> The enactment . . . prescribes a ratio of 1 to 1.34 between the district with the least population and the district with the greatest population. In plain words this means that a vote in the least populous district was worth about one-

third more than a vote in the most populous district. The disparity is too great."

"As above indicated, Chapter 871 of the Acts of 1965, in our opinion, deviates too widely from the constitutional norm of 'one man, one vote' to be tolerated. Some departure from the ideal is of course inevitable. The equality which the Constitution commands allows, however, 'only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. Roman v. Sincock, 377 U.S. 695, 710, 84 S.Ct. 1449, 12 L. Ed.2d 620 (1964).' Drum v. Seawell, 250 F.Supp. 922 (M.D.N.C. 1966), aff'd sub nom. Drum v. Austin, 86 S.Ct. 1237 (Apr. 4, 1966). There is no rational justification for one district exceeding in population the average of all the districts in the state by 14.38%, while another falls below the average by 14.90%—a gross discrepancy of one-third. See Baker v. Clement, 247 F.Supp. 886 (M.D. Tenn. 1965) (32% discrepancy invalid); Roberts v. Babcock, 246 F.Supp. 396 (D.Mont. 1965) (46% discrepancy invalid); Meeks v. Anderson, 229 F.Supp. 271 (D.Kan. 1964) (44% discrepancy invalid). Cf. Grills v. Branigan (S.D.Ind. Feb. 17, 1966) (20% discrepancy tolerated); Moore v. Moore, 246 F.Supp. 578 (S.D.Ala. 1965) 14% discrepancy tolerated).

"Even if a district plan initially comports with

the one-to-one formula, discrepancies may be expected to arise with changing conditions. Such discrepancies are unavoidable and must be tolerated for a time, till the next census, but in initial districting the aim should be to come as closely as possible to a one-to-one ratio. There is no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground. We must therefore declare Chapter 371 of the Acts of 1965 invalid and forbid its submission in the referendum set for the fall elections of 1966.

* * * * * * * * *

"We do not doubt the power of the court in these circumstances to adopt a redistricting plan to remain in force till the General Assembly adopts its own constitutionally valid plan. Three-judge federal courts have redistricted in at least three instances. Klahr v. Goddard, 250 F.Supp. 537 (D.Ariz. 1966); Roberts v. Babcock, 246 F.Supp. 396 (D.Mont. 1965); and see People ex rel. Scott v. Kerner, 33 Ill.2d 460, 211 N.E.2d 736 (1965), where the plan was the product of consultation between the state court and a three-judge federal court. But cf. Park v. Faubus, 238 F.Supp. 62 (E.D.Ark. 1965) (at-large congressional elections ordered); Calkins v. Hare, 228 F.Supp. 824 (E.D.Mich. 1964) (same).

. . . In short, we have given dominant weight, as we think we must, to the population factor, without sacrificing other relevant considerations.

> In our plan the maximum deviation from the ideal of equality is only 5,624 (1.4%) over the average, in the Second District, and 4,849 (1.1%) below the average, in the Fourth District, so that the maximum deviation in the weight of a vote is only in the ratio of 1 to 1.026.

League of Nebraska Municipalities v. *Marsh*, 242 F.Supp. 357 (1965) involved Nebraska's newly enacted plan of unicameral apportionment. Under that plan one vote in the smallest district was equal to 1.6 votes in another district, and the ten smallest districts had two more legislators than they were entitled to on a population basis. In striking down the plan the Court said:

> "We have considered the opinion in Lucas v. Colorado General Assembly, 337 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632, indicating that a maximum population variance ratio of 1.7 to 1 is at least arguably apportioned substantially on a population basis. If there were no redistricting plan other than L.B. 628 which could be devised following county lines, the 1.6 to 1 ratio present thereunder might arguably be permissable . . .
>
> "The determinative factor, however, is that the situation does not bear out the claim of the supporters of L.B. 628 that it is the best plan which possibly could be devised. Under the teaching of the reapportionment cases, each plan must be examined on its own merits.
>
> * * * * * * *

"We recognize the unique organization of Nebraska's legislature. But in considering the constitutionality of L.B. 628, the Court cannot accept the degree of deviation from the population basis as rationally justifiable without defeating the purpose of reapportionment.

. . . The Court has considered other possible apportionment plans in reviewing the validity of L.B. 628 and found at least three alternatives which are more proportionate than this plan. In one plan Nebraska can be divided into 37 districts following county lines and have a maximum population variance ratio of approximately 1.26 between the smallest and the largest districts.

The Court then adopted the least discriminatory plan.

Appellees' position was also rejected in *Paulson v. Meier*, 246 F. Supp. 36 (1965), a North Dakota case in which the factual circumstances were strikingly similar to those in the instant case:

". . . District 9, therefore, is more than 14% under the statewide average, while District 36 is 19.4% above that average. If the mathematical weight of one person in District 36 is 1, the voting weight of one person in District 9 is 1.39 . . .

"From the foregoing analysis of House Bill 566 it clearly appears that the cumulative effect of all the disparities from population-based rep-

resentation is that persons comprising more than one-eighth of the population of this State, and who reside in the same general compact, contiguous area, have had the weight of their votes '* * * in a substantial fashion diluted when compared with votes of citizens living in other parts of the State' (Reynolds, supra, 377 U.S. p. 568, 84 S.Ct. p. 1385) and their right to vote has thereby been unconstitutionally impaired.

"Defendant strenuously contends that House Bill 566 was the best and only plan that could have been adopted by the Thirty-ninth Legislative Assembly and was the product of 'an honest and good faith effort' on the part of its members . . .

"We are satisfied that House Bill 566 does not meet the test of being the result of 'a good faith effort to establish districts substantially equal in population,' and we are convinced, and so hold, that said Bill does not comply with the constitutional requisites of the Equal Protection Clause of the Federal Constitution, and is therefore a nullity. Accordingly, Defendant's motion to dismisss is denied.

"We are thus confronted with the question of the remedy to be fashioned, and the effective date of that remedy . . .

"We have carefully and meticulously examined and considered each of the plans introduced at

the Thirty-ninth Legislative Assembly. We turn our attention to one of those plans, designated at that session as the 'Smith' plan. . .

"The 'mathematical exactness' of this 'Smith' plan is impressive. . .

"The so-called 'Smith' plan, as modified by the described change affecting District 1 and 2, is hereinafter set forth as Appendix I, and made a part hereof; the same is hereby adopted and declared to be the legislative apportionment law of the State of North Dakota. . .

Appellees argue that a presumption of validity attaches to the Legislature's reapportionment enactment because the plan "promot[es] the interest of the people as a whole," having been enacted by a "knowledgeable" Legislature (Appellees' Brief, p. 9). This is not only a classic example of lifting oneself by one's own bootstraps but is a contradiction in terms following this Court's two prior opinions holding that the Florida Legislature, exactly as constituted when it enacted HB 17-X (66), was malapportioned and not representative of the interests of the people of Florida as a whole.

Appellants believe the presumption of validity customarily accorded legislative enactments does not apply when a malapportioned legislature enacts a reapportionment. Appellants do not contend, nor need they contend, that all enactments of a constitutionally malapportioned legislature are void per se or that the presumption of validity is not applicable when the legislation pertains to matters other than reapportionment. But Appellants

do maintain that no automatic presumption of validity attaches to the reapportionment enactments of a malapportioned legislature. To the contrary, the attempt of any malapportioned legislature to reapportion itself should be most carefully scrutinized, without the benefit of any presumption of validity to ward off such scrutiny.

Appellants' approach recognizes that practical consequences do derive from the determination of courts as to whether a presumption of validity attaches or does not attach to the apportionment enactments of a malapportioned legislature. District Courts, like the District Court in this case, invariably refuse to compare the plan enacted by the legislature with other possible plans, if they initially determine that the enacted plan is entitled to the protection of the presumption of validity. The Nevada Court said so in *Dungan v. Sawyer*, 253 F. Supp. 352 (1966). Appellees understandably relied on this case (Appellees' Brief, p. 19) in supporting the decision appealed from, since the Court in *Dungan* forthrightly attaches a protective presumption of validity to the efforts of a malapportioned and "rural dominated legislature which gave up no more than it believed it must" to produce a plan that the court described, after declaring it constitutionally permissible, as approaching "dangerously close to the edge of unconstitutional waters." The District Court in the instant case even pretended that the Appellants' joint plan did not exist. On the other hand, it is clear that when Courts refuse to attach a presumption of validity to the reapportionment acts of a malapportioned legislature, they inevitably make the comparison between the enactment and the best possible plan that could have been enacted, as did the Courts in *Tawes*, *Marsh* and *Paulson*, quoted above.

Recognition of the presumption of validity leads inevitably to a refusal to compare what is with what might have been, and this refusal leads on to the standard of "maximum permissible deviation". If a court refuses to compare the enacted plan with the best possible plan that was or could have been presented, it can only compare the plan to those in effect in other States in order to see if it falls within so-called constitutionally permissive outer limits, defined in *Toombs v. Fortson*, 241 F. Supp. 65 (D.C. Georgia, 1965), et seq. (see Appellants' Main Brief, pp. 12-18) as a 15 percent variation from equality. The Appellees now ask this Court to adopt 18 percent as a figure within constitutionally permissive limits (see Appellees' Brief, pp. 17-21). This unfortunate approach of the Appellees and the Florida District Court has now eroded the *Toombs* 15 percent maximum to Florida's 18 percent, which in turn gave way to Nevada's 22 percent.

To halt this process this Court must deny any presumption of validity to apportionment legislation enacted by a malapportioned legislature. Unless this Court does so, the great democratic revolution in state government which began with *Baker v. Carr*, 369 U.S. 186 (1962) must end with some bland percentage expression of a maximum permissible deviation.

II

APPELLANTS HAVE THE LEGAL STANDING TO PROSECUTE THIS APPEAL

Appellants' main Brief (pages 25-28) covers this issue in detail. In reply to the Briefs of Appellees (pp. 23-25), Appellants invite the court's attention to the fact

that Appellees have repeated the error contained in their Motion to Affirm or Dismiss by stating that Dade County is over-represented in the Florida Senate by 5.9 percent. Dade County is, in fact, under-represented by 5.9 percent (see transcript of record, page 59, showing the ideally sized senatorial district with a population of 103,158 as compared to the average 109,219 persons per Senator pertaining in the Senatorial Districts which include Dade County). Since Dade County is under-represented in the Senate by 5.9 percent, the voters of Dade County and Appellant Swann are under-represented to a substantially greater extent under HB 17-X(66) than they would be under the joint plan proposed by Appellants. Even on the narrow criteria for determining standing suggested by Appellees, Appellants have standing.

III

THE MULTI-MEMBER DISTRICTS IN THE REAPPORTIONMENT PLAN OF APPELLANTS DO NOT DISCRIMINATE AGAINST POLITICAL OR RACIAL MINORITIES.

The Attorney General has responded to the argument of the amici in the final paragraph on page 22 of his Brief. Without a showing that single member districts are generally used throughout the State except where there are concentrations of minority groups, political, racial, or religious, an apportionment plan incorporating some multi-member districts is constitutional. There has been no showing, or attempt to show, unconstitutional discrimination under the reapportionment plan jointly submitted by Appellants. There can be no such showing. This Court has dealt with almost identical situations in *Fortson v.*

Dorsey, 379 U.S. 433 (1965) and *Burns v. Richardson* ___ U.S. ___, 16 L. Ed. 2d 376 (1966). Part II of the *Burns* opinion deals with this specific issue at some length.

The point of view of the Republican amici curiae on this issue might well have changed since the election of November 8, 1966 in which a Republican was elected Governor of Florida for the first time since reconstruction and the Republican national tide was significantly evident in elections to the Florida Legislature. These election results produced empirical proof that multi-member Districts are not discriminatory per se, and certainly not discriminatory insofar as the Republican Party in Florida is concerned.

CONCLUSION

In concluding, Appellants would call the circumstances of Florida's proposed Constitutional Revision to the attention of the Court. Article XVII of the Florida Constitution provides for two methods of revising the State Constitution. The first is by Constitutional Convention, as provided in Section 2 of the Article in the following terms:

> " . . . Delegates to the convention shall equal in number and be apportioned among the various counties as the membership of the house of representatives is apportioned.

The second method is by the State Legislature, as provided in Section 4 of the Article in these terms:

" . . . either branch of the legislature . . . may

propose by joint resolution a revision of the entire constitution . . . If the joint resolution is adopted by vote of three fifths of the members elected to each house, the yeas and nays shall be entered upon their respective journals. . . ."

In either case, it will be apparent to the Court that the apportionment of the drafting body, be it convention or legislature, is a key factor in the State Constitutional revision process.

The 1965 Florida Legislature, apportioned in a manner twice held unconstitutional by this Court, set the constitutional revision process in motion. A Constitutional Revision Commission was created by the Legislature to draft a new State Constitution. That Commission prepared a first draft, held lengthy public hearings thereon, and has recently promulgated a second draft based upon those public hearings and its own discussions and ideas. It proposes to place a draft of a revised Constitution in the hands of the 1967 Legislature, scheduled to meet in regular session at the beginning of April, 1967. The Legislature has indicated an intention to go into special session immediately following the adjournment of the regular session, to consider the best means of effecting constitutional revision.

These developments add a further significant question to those already pending before the Court in this case. That question, succinctly put, is whether a malapportioned legislature can participate in the revising of a State's organic law. For reasons already stated at length, Appellants respectfully contend that an unconstitutionally apportioned legislature cannot and should not be per-

mitted the attempt. Even assuming, only for the sake of argument, that a presumption of validity should be accorded the apportionment enactments of a malapportioned legislature, Appellants submit that no such presumption should be further extended to cover a malapportioned legislature during its crucial deliberations and participation in the state constitutional revision process.

Respectfully submitted,

THOMAS C. BRITTON
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida 33130

STUART SIMON
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Attorneys for Appellant
Supervisor of Elections
of Dade County, Florida

SUPREME COURT OF THE UNITED STATES

No. 136.—October Term, 1966.

Richard H. M. Swann et al., Appellants, v. Tom Adams, Secretary of State of Florida, et al. | On Appeal From the United States District Court for the Southern District of Florida.

[January 9, 1967.]

Mr. Justice White delivered the opinion of the Court.

This case presents still another development in the efforts of the State of Florida to apportion its legislature in accordance with the requirements of the Federal Constitution. There have been previous chapters in this story. The litigation began in 1962. On June 22, 1964, in *Swann* v. *Adams*, 378 U. S. 553, we reversed the judgment of the three-judge District Court upholding the then current legislative apportionment in Florida and remanded the case for further proceedings, consistent with the Court's opinion in *Reynolds* v. *Sims*, 377 U. S. 533, and its companion cases. The District Court then deferred further action until the conclusion of the legislative session which convened on April 6, 1965. The legislature proceeded to reapportion the State on June 29, 1965. The District Court forthwith held the new plan failed to meet the requirements of the Fourteenth Amendment but approved the plan on an interim basis, limiting it to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature. This Court, finding no warrant for perpetuating what all conceded was an unconstitutional apportionment for another three years, reversed the judgment and remanded the case to the District Court so that a valid reapportionment plan would be made effective for the

1966 elections. *Swann* v. *Adams*, 383 U. S. 210. The Florida Legislature again acted on the matter in March 1966 by adopting still another reapportionment plan which the appellants promptly attacked in the District Court.

The new plan provides for 48 senators and 117 representatives, and includes what in effect are multimember districts for each house. The senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% under-represented. The ratio between the largest and the smallest district is thus 1.30:1. The deviation from the average population per senator is greater than 15% in one senatorial district, is greater than 14% in five more districts and is more than 10% in still six other districts. Approximately 25% of the State's population living in one quarter of the total number of senatorial districts is under- or over-represented by at least 10%. The minimum percentage of persons that could elect a majority of 25 senators is 48.38%

In the house the population per representative ranges from 34,584 to 48,785 or from 18.28% over-represented to 15.27% under-represented. The ratio between the largest and the smallest representative district is 1.41 to 1. Two districts vary from the norm by more than 18% and another by more than 15%, these three districts having seven of the 117 representatives. Ten other districts with 22 representatives vary from the norm by more than 10%. There is thus a deviation of more than 10% in districts which elect 29 of the 117 representatives. 24.35% of the State's population live in these districts. The minimum percentage of persons that could elect 58 representatives is 47.79% and a majority of 59 representatives could be elected by 50.43% of the population.

The District Court recognized that "apportionment must be substantially on a population basis" but that

"mathematical exactness or precision is not required." It went on to hold "[s]uch departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan . . . what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests." Accordingly, the plan was held constitutional.

The State would have us dismiss this case for lack of standing on the part of appellants to maintain this appeal because appellants are from Dade County, Florida, which appellants concede has received constitutional treatment under the legislative plan. Appellants, however, had before the District Court their own plan which would have accorded different treatment to Dade County in some respects as compared with the legislative plan, and the alternative plan was rejected by the District Court. Moreover, the District Court has apparently consistently denied intervention to other plaintiffs, seemingly treating the appellants as representing other citizens in the State. The challenge to standing cannot succeed.

We reverse for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts with respect to both the senate and house of representatives. *Reynolds* v. *Sims*, *supra*, recognized that mathematical exactness is not required in state apportionment plans. De minimus deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed de minimus and none of our cases suggests that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy. On the contrary, the *Reynolds* opinion limited the allowable deviations to those minor variations which

"are based on legitimate considerations incident to the effectuation of a rational state policy." 377 U. S. 533, 579. Thus that opinion went on to indicate that variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines. Likewise, in *Roman* v. *Sincock*, 377 U. S. 695, 710, the Court stated that the Constitution permits "such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

The State relies on *44th General Assembly* v. *Lucas*, 379 U. S. 693; *Burnette* v. *Davis*, 382 U. S. 42; and *Harrison* v. *Schaefer*, 383 U. S. 269, which were *per curiam* affirmances of lower court judgments in reapportionment cases. The State suggests that the plans approved in those cases involved variations of equal or greater magnitude than those revealed by the Florida apportionment, and for that reason the judgment here should be affirmed. But in none of these cases was the issue of the validity of the differences in population between various legislative districts either raised or ruled upon in this Court. There was no occasion to explore whether or not there was ample justification for the challenged variations. And in *Lucas* v. *Colorado General Assembly*, 377 U. S. 713, 727, 734–735, the Court expressly reserved decision upon the validity of a variance ratio of 1.7 to 1. In any event, the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State. "What is marginally permissible in one State may be unsatisfactory in another, depending upon the particular circumstances of the case." *Reynolds* v. *Sims*, 533 U. S. 553, 578.

As this case comes to us we have no alternative but to reverse. The District Court made no attempt to ex-

plain or justify the many variations among the legislative districts. As for the State, all it suggested in either the lower court or here is that its plan comes as close as "practical" to complete population equality and that the State was attempting to follow congressional district lines. There was, however, no attempt to justify any particular deviations, even the larger ones, with respect to either of these considerations. Moreover, the State's brief states only that the legislature followed "in most instances" the congressional boundaries and with respect to "practicality" it seems quite obvious that the State could have come much closer to providing districts of equal population than it did. The appellants themselves placed before the court their own plan which revealed much smaller variations between the districts than did the plan approved by the District Court. Furthermore, appellants suggested to the District Court specific amendments to the legislative plan which, if they had been accepted, would have measurably reduced the population differences between many of the districts. Appellants' own plan and their suggested amendments to the legislative plan might have been infirm in other respects but they do demonstrate that a closer approximation to equally populated districts was a feasible undertaking. The State, with admirable candor, states that it offered no evidence in the District Court to explain the challenged variations with respect to either the house or the senate. In its view, however, the plan should be approved on the record as it is.

We think the better view is that taken by the three-judge court in Maryland which disapproved a legislative plan involving an over-representation of 14.90% and an under-representation of 14.38% because, as Judge Sobeloff said, there was "no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground." *Maryland Citizens Committee for Fair Congressional Redistricting, Inc.* v.

Tawes, 253 F. Supp. 731, 733. Compare *League of Nebraska Municipalities* v. *Marsh*, 242 F. Supp. 357, disapproving a ratio of 1.6 to 1 between the smallest and the largest district absent satisfactory explanation by the State and *Paulson* v. *Meier*, 246 F. Supp. 36, which found a ratio between the smallest and largest district of 1.39 to 1 to be unjustified on the basis offered by the State.

The appellants complain of other aspects of the plan besides unequally populated legislative districts. Under the new statute three senators were not required to run for election in 1966 but were allowed to finish their present terms expiring in 1968. These three senators, as the District Court noted, were elected in districts that are identical in territory to their districts under the legislative plan. Also, one senate and six house seats were subject to residency requirements. The District Court found no invidious discrimination in these aspects of the plan. Appellants also claim that the legislative plan discriminates invidiously by under-representing the populous urban counties and by over-representing the sparsely settled rural counties in both houses. The court below found that "what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests." In the light of our disposition of this case, however, we need not reach and decide any of these additional issues, although we note that *Reynolds* v. *Sims* indicates the constitutional impropriety of maintaining deviations from the equal population principle in deference to area and economic or other group interests. 377 U. S. 533, 579–580.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 136.—October Term, 1966.

Richard H. M. Swann et al., Appellants, *v.* Tom Adams, Secretary of State of Florida, et al.	On Appeal From the United States District Court for the Southern District of Florida.

[January 9, 1967.]

Mr. Justice Harlan, whom Mr. Justice Stewart joins, dissenting.

Reynolds v. *Sims*, 377 U. S. 533, laid down a "one man-one vote" mandate for the structuring of all state legislatures, but the Court there recognized, as it does again today, that "mathematical exactness is not required," *ante*, p. 3, and that variations are acceptable if they "are based on legitimate considerations incident to the effectuation of a rational state policy . . . ." 377 U. S., at 579, cited, *ante*, p. 4. The Court refuses, however, to accept Florida's present legislative apportionment plan, at least on the record before us, because neither the State nor the District Court justified the relatively minor variations in population among some of the districts.

This holding seems to me to stand on its head the usual rule governing this Court's approach to the validity of legislative enactments, state as well as federal, which is of course that they come to us with a strong presumption of regularity and constitutionality. See, *e. g.*, *Butler* v. *Pennsylvania*, 10 How. 402; *Davis* v. *Department of Labor*, 317 U. S. 249; *Fleming* v. *Nestor*, 363 U. S. 603. Accordingly, I do not believe the burden is on the State to justify every aspect of a complex plan completely restructuring its legislature, on pain of its

being declared constitutionally invalid by the judiciary. I can think of no other area of law in which there is an analogous presumption of invalidity attaching to a legislative enactment of a State in an area of its admitted competence and superior experience. The burden of showing unconstitutionality should be left here, as in other cases, on the attacking party.

I would affirm the judgment of the District Court on the grounds (1) that the plan enacted by the Florida Legislature is in substantial compliance with the rule of *Reynolds* v. *Sims*, *supra*, and (2) that the appellants have not shown any invidious purpose for, or effect flowing from, the mathematical variations among certain districts.